SENATE—*Tuesday, February 1, 1983*

(Legislative day of Tuesday, January 25, 1983)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Loving Heavenly Father, help us not to take for granted the rare and wonderful atmosphere in which we, who are part of the U.S. Senate, labor. We thank Thee for the privilege of working here—for the high morale—the beautiful, untiring support given to the Senators and their staffs, by the subway people, the elevator operators, those who work in food service, the security people, the pages, and the maintenance crews. Grant that their thoughtful, constant kindnesses will be gratefully received and not allowed to feed pride of position or false self-importance.

Gracious God, may we hear and heed the penetrating indictment of Jesus Christ in His condemnation of religious leaders of the day for their pompous egos: "They bind heavy burdens, hard to bear, and lay them on men's shoulders; for they themselves will not move them with their finger. They do all their deeds to be seen by men; and they love the places of honor at feasts * * *. He who is greatest among you shall be your servant; whoever exalts himself will be humbled, and whoever humbles himself will be exalted." Matthew 23: 4-6,11,12 (RSV).

Forgive us Lord for presumptuous, prideful attitudes. Keep us humble and grateful. In Jesus' name. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. BAKER. I thank the Chair.

THE JOURNAL

Mr. BAKER. Mr. President, I ask unanimous consent that the Journal of the proceedings of the Senate be approved to date.

The PRESIDENT pro tempore. Without objection, it is so ordered.

THE PRESIDENT'S PROPOSED BUDGET

Mr. BAKER. Mr. President, yesterday on Capitol Hill, Senators and their staffs received copies of President Reagan's proposed budget for fiscal year 1984, and to no surprise, his message has quickly become the talk of the town.

I for my part, would like to add the following observations to the current flurry of reactions:

First, the President's message marks the beginning of what will be a long and arduous budget process. There are hard decisions to be made.

Second, every Member of the Senate, and the House, will no doubt have their own opinions as to the strengths and weaknesses of the proposal, but the situation that we must avoid is a legislative stalemate that leaves this country without a comprehensive economic policy.

Third, as the long and painful recession draws to a close, Congress simply cannot afford to send the wrong signals to the financial markets and the business communities.

And finally, President Reagan's budget represents the best starting point for the budget deliberations, and is emblematic of the leadership qualities that he has exhibited since he first came to office.

TVA TO REDUCE POWER RATE—GOOD NEWS FOR THE VALLEY

Mr. BAKER. Mr. President, the consumers of TVA power have been hard hit by a series of substantial rate increases in the last few years. These have been due in large part to the combined effects of high interest rates and rapid inflation during a period of heavy expenditures for powerplant construction. I have been concerned by these increases in power costs—particularly during a period of economic recession—and have encouraged the members of the TVA Board to do everything in their power to limit further increases.

I have been extremely pleased with the Board's response, and I wanted to share my enthusiasm with you. Board Chairman Charles Dean and Board members S. David Freeman and Richard Freeman have undertaken a variety of management initiatives designed to hold expenses to a minimum. Labor and materials costs, for example, are being held to the same level for the current fiscal year as for fiscal 1982. These initiatives helped to make possible an increase in consumers' bills of only 4.4 percent last October.

The news has gotten even better since then. I have now learned that TVA, with the benefit of favorable weather and operating conditions, is surpassing its own financial projections.

First, an additional $44 million resulting from TVA's operations in fiscal year 1982 is available as a credit against March power bills. This should provide a one-time bill reduction of about 10 percent.

Second, lower interest rates and reduced borrowings have decreased estimated interest expenses by about $76 million for fiscal year 1983. Power system performance has also improved significantly over projected levels. Use of nuclear power and hydropower have helped reduce expenses. In these circumstances, power system managers now estimate that 1983 revenue could be reduced by $125 million and still permit TVA to meet all of its financial tests, while retaining a contingency for emergencies. This will permit a rate reduction of between 5 and 6 percent from April 1 to September 30.

Even with this positive turn of events, costs will continue to increase. I understand there will likely be a need for rates to return to present levels—or higher—in October. However, that these reductions are being made effective in the current year is an indication that TVA is sensitive to the needs of the people and industries of the Tennessee Valley during a time of economic distress.

The Board's overall achievement in holding rates down despite inflationary pressures provides gratifying evidence that TVA has weathered the storms of the recent past and is sailing toward smoother waters. I commend the Board members for their outstanding stewardship during this difficult period, and I look forward to continued cooperation with TVA in tackling the pressing economic challenges of the valley in the 1980's.

REALLOCATION OF TIME

Mr. BAKER. Mr. President, there are three special orders for today, beginning with the distinguished Senator from Alabama (Mr. DENTON).

The second special order is in favor of the distinguished Senator from Georgia (Mr. MATTINGLY). I am advised that he will not need that time. I ask unanimous consent that the time assigned to Senator MATTINGLY be transferred to me.

The PRESIDENT pro tempore. Without objection, it is so ordered.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

ORDER FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that after the execution of the special orders, there be a period for the transaction of routine morning business, not to extend beyond 12 noon, in which Senators may speak for not more than 2 minutes each.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECESS FROM 12 NOON UNTIL 2 P.M. TODAY

Mr. BAKER. Mr. President, today is Tuesday, and there is a caucus, at least on one side of the aisle, perhaps on both sides of the aisle, that requires the attendance of Senators. Caucuses are not official in nature—that is, they are not a requirement of the Standing Rules of the Senate—but they are essential in the modern Senate for the transaction of business, because it is in the caucuses, which take place separately and off the floor of the Senate, where many policy decisions are made and the outlines and formulation of the issues are determined.

In order to accommodate Senators who will attend those caucuses, I ask unanimous consent that the Senate stand in recess today from 12 noon until 2 p.m.

The PRESIDENT pro tempore. Without objection, it is so ordered.

SENATE SCHEDULE

Mr. BAKER. Mr. President, at 2 p.m., when the Senate reconvenes, it may be that Senators may wish to speak on the Dole nomination, the vote on which will occur in executive session at 4 p.m. today, or it may be that there will be no further debate on that nomination, which is noncontroversial, so far as I can ascertain.

Mr. BYRD. I would bet that the majority leader and I, right now, could state the outcome. I would bet that we could state it without missing a decimal point.

[Laughter.]

Mr. BAKER. I would bet we could, and I would not even wager a thin dime on that vote. I believe all of us will be happy for the opportunity to produce that result, which will give Elizabeth Dole a great start as the Secretary of Transportation.

Mr. President, in view of the fact that it is unlikely that there will be extensive further debate on the Dole nomination before the vote at 4 p.m., I ask unanimous consent that when the Senate returns at 2 p.m., after the recess, there be a further period for the transaction of routine morning business in which Senators may speak for not more than 5 minutes each, with the exception of the distinguished minority leader, who, if he wishes, may speak without limitation, and that that time not extend past 4 p.m.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I have examined the calendar of business hungrily every morning to see what the committees have wrought. Today, I find one bill, Calendar No. 2, S. 271, to amend the National Trails Systems Act by designating additional national scenic and historic trails, and for other purposes. There is a report on that measure, but I wonder whether the minority leader would be inclined to inquire through his clearance process whether we might waive the 3-day rule and perhaps the 1-day rule and proceed with that item today.

Mr. BYRD. Remembering that the 3-day rule is something of value which is discussed frequently, I assure the majority leader that I will check and see if we can waive that rule; also the 1-day rule, I suppose.

Mr. BAKER. I thank the Senator.

Mr. President, I remember vividly the concerns and problems that the minority leader had with respect to the 3-day rule when he was the majority leader. I will report to him that which he already knows: The situation is not a bit better.

[Laughter.]

Mr. President, I have no further need for my time under the standing order, and I am prepared to yield the floor. I offer my remaining time, if any, to the minority leader.

Mr. BYRD. Mr. President, I thank the majority leader for his gracious offer. I have no need for the time at this point.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

S. 331—NATIONAL INVESTMENT CORPORATION ACT

Mr. BYRD. Mr. President, I rise today to introduce the National Investment Corporation Act of 1983. This legislation would establish a national development corporation to assist targeted basic industries in the retooling and modernization necessary to make them competitive in world markets, and to accelerate the growth of evolving, high technology industries. In addition, the National Investment Corporation would help to insure balanced economic growth across the country by encouraging the location of new industry in those regions most deeply and adversely affected by long-term unemployment.

The American economy today stands at a crossroads, caught in the grip of far-reaching structural changes. Nowhere are these changes more profoundly felt than in America's industrial heartland, in the steel and auto factories, and other heavy industries which for so many decades have symbolized the strength and vigor of the American economy. Today, these smokestack industries are in trouble. In communities all across this country, plants stand closed, capacity lies idle, and thousands of workers are jobless.

The worst recession in post-World War II history has dealt a savage blow to basic industries already struggling to adjust to the long-term structural changes which are sweeping the economy. The steel industry, for example, operated at less than 50 percent of capacity in 1982, as its industrial output declined during the year to the lowest level ever recorded. In my home State of West Virginia, employment in the steel industry has contracted by almost 40 percent over the last 3 years. Economic recovery alone will not be able to fully revive the steel industry. As with many of our Nation's basic industries, the steel industry faces challenges which go beyond general economic recovery.

The major challenge confronting the steel industry, and many other basic industries, is one of moderization. A 1980 study by the American Iron and Steel Institute predicted that the domestic steel industry, over the next 10 years, would have to invest $4.4 billion (in 1978 dollars) annually in modernization in order to maintain a competitive position with foreign steel producers. And the steel industry is not alone in its need to invest in modernizing its plant and equipment.

The need to increase capital investment in order to promote plant modernization, job creation, and productivity growth in most of our basic industries is unquestioned. Yet, the need is not being met. According to the Commerce Department, U.S. businesses plan to reduce their capital expenditures in 1983 by 5.2 percent, in real terms. At a time when capital investment is needed most, capital spending plans are being scaled back.

The legislation I am introducing today would help spur this urgently needed investment. The purpose of the National Investment Corporation would be to insure that adequate and affordable capital is available for private investment projects designed to improve productivity. Assistance would be provided primarily through direct loans, equity investments, and loan guarantees. In this way, the Corporation would be utilizing the Government's ability to efficiently raise and encourage the flow of capital to meet our national priorities, without imposing a bureaucracy over private investment and innovation.

The National Investment Corporation would not be a bailout for unprof-

itable industries. In determining which investment projects should receive assistance, priority would be given to those projects which have a reasonable likelihood of incurring no financial loss for the Corporation. The Corporation would target its resources at modernizing and rationalizing struggling, but viable basic industries, and at promoting evolving high technology industries which can lay a base for future economic growth. In addition, priority would be given to projects with a direct link to the Nation's defense capability, and to projects which would encourage the location of new industry in areas deeply affected by long-term unemployment.

The Corporation would be managed by a board of 12 directors, 3 of whom would be ex officio members: the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Labor. The remaining nine members, including the Chairman, would be appointed by the President, by and with the consent of the Senate, with terms coterminous with that of the President. Excluding the Chairman and the three ex officio members, the remaining eight members of the board would be required to have backgrounds in corporate finance, corporate development, heavy or high-technology industries, labor, public administration, or public policymaking.

The Corporation would be allocated $5 billion in equity capital from the Federal Government, and would be authorized to borrow an additional $25 billion. These funds could be loaned on a long-, medium-, or short-term basis at market rates whenever possible, or at below-market rates when such rates are deemed necessary to insure the viability of a high priority project.

The Corporation would also be empowered to establish additional financial institutions or subsidiaries, such as leasing corporations, whenever it deemed such institutions vital to the success of a project. In addition, the Corporation would be able to create a secondary market for development-type loans by repurchasing or guaranteeing loans issued by other institutions. In return for financial assistance, the Corporation would encourage cooperation and burden-sharing among owners, workers, managers, creditors, and suppliers.

The National Investment Corporation is not designed as a means of imposing Federal policies on our State and local governments. On the contrary, in order to promote balanced economic growth throughout the Nation, the Corporation would work closely with State and local officials in an effort to meet regional needs and priorities. While the headquarters of the Corporation would be in Washington, D.C., the board would be empowered to establish regional offices around the country to facilitate such intergovernmental cooperation.

The need for a National Investment Corporation is great. We can no longer afford to sit and watch our basic industries become less and less competitive in international and domestic markets. We can no longer allow other nations to outpace the United States in the development of new and innovative technologies. We must act now to insure that American businesses have the capital they desperately need to maintain their competitive position. I believe this legislation, by establishing a National Investment Corporation, is an important step in that effort.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of the bill and a brief summary.

There being no objection, the summary and bill were ordered to be printed in the RECORD, as follows:

THE NATIONAL INVESTMENT CORPORATION ACT

The National Investment Corporation, NIC, would enhance economic growth in the United States by promoting greater improvements in productivity.

Through the targeted use of financial resources, the NIC would promote capital investment for the purposes of:

(1) modernizing and revitalizing basic heavy industries, such as coal, steel, and autos, in order to improve the competitiveness of American products in domestic and international markets;

(2) accelerating the growth of new and evolving high technology industries which can be the source of future economic growth; and

(3) insuring balanced economic growth across the country by encouraging the location of new industry in regions hardest hit by long-term unemployment.

The NIC would provide financial assistance to private investment projects primarily through direct loans, equity investments, and loan guarantees.

The NIC would not be a bailout for failing industries. Assistance would be targeted at struggling but viable basic industries, and at promising high technology industries. In selecting projects for assistance, the NIC would give priority to projects which have a reasonable likelihood of incurring no financial loss for the Corporation.

The NIC would receive a grant of $5 billion in equity capital from the Federal government, and it would have authority to borrow an additional $25 billion.

The NIC would be managed by a board of 12 directors, three of whom would be ex officio members: the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Labor. The remaining nine members, including the Chairman of the Board, would be appointed by the President, with the advice and consent of the Senate, with terms coterminous with that of the President. The members of the Board would be selected from individuals with backgrounds in corporate finance or development, heavy or high technology industry, labor, public administration, or public policymaking.

The NIC would be headquartered in Washington, D.C., though the board would be able to establish regional offices in order to promote cooperation with State and local officials, and to insure regional needs and priorities are met.

S. 331

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Investment Corporation Act".

PURPOSE

SEC. 2. The purpose of this Act is to create a National Investment Corporation (hereinafter referred to as the "Corporation") to encourage productivity growth in the United States economy through targeted use of financial resources—

(1) to modernize industries to increase their ability to compete effectively with international competition;

(2) to accelerate the growth of high technology and other evolving industries; and

(3) to insure balanced economic growth across the country by encouraging the location of new industry in regions hardest hit by problems of long-term unemployment.

MANAGEMENT

SEC. 3. (a) The Corporation shall be managed by a board of directors, consisting of twelve members of which the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Labor shall be members ex officio, and the other nine members shall be appointed by the President, by and with the advice and consent of the Senate, with terms coterminous with that of the President. Only the Chairman of the Board shall be a full time employee. The other eight members of the board shall be appointed from among persons with a background in any of the following: corporate finance, corporate development, heavy industry, high technology industry, labor, public adminsitration, or public policymaking.

COMPENSATION

SEC. 4. The Chairman of the board shall be compensated at a level determined by the board, and the other board members shall be compensated on a per diem basis at the maximum rate allowed under Federal law. The board shall establish the salary structure for the Corporation.

PRINCIPAL OFFICE

SEC. 5. The central office of the Corporation shall be located in the District of Columbia. The board may establish regional offices where it determines that the creation of such offices would promote the efficient operation of the Corporation.

FUNDING

SEC. 6. (a) The Corporation may issue and the Secretary of the Treasury shall purchase common stock aggregating not to exceed $5,000,000,000.

(b) The Corporation is authorized to issue, and to have outstanding at any one time in an amount aggregating not more than $25,000,000,000 its own notes, debentures, bonds, or other such obligations (hereinafter referred to as "obligations"), and the Federal Financing Bank shall purchase such obligations. Obligations of the Corporation shall mature or be redeemable at the option of the Corporation before maturity in such manner as may be stipulated in such obligations, and shall bear such rate or rates of interest as may be determined by the Corporation.

(c) There are authorized to be appropriated such sums as may be necessary to carry out this section.

POWERS

SEC. 7. (a) The Corporation may lend on a long, medium, or short term basis, at market rates where possible, and at below market rates where such lower rates are necessary to insure the viability of a high priority project determined under section 8. The Corporation may also acquire and hold equity securities in connection with a project where, in the view of the board, an equity position is necessary to insure the financial viability of a project, or to insure that the Corporation is protected against risk.

(b) The Corporation may establish additional financial institutions and subsidiaries to carry out specified purposes prescribed by the Corporation.

(c) The Corporation shall carry out its administrative and other functions in such manner as the board shall prescribe without regard to the provisions of title 5, United States Code, relating to the competitive service, compensation, or agency proceedings.

CRITERIA

SEC. 8. In selecting projects for financial assistance under this Act, the board shall give a priority to—

(1) projects which have a reasonable likelihood of incurring no financial loss for the Corporation;

(2) projects which results in significant increases in productivity in existing industries;

(3) projects which promote new or evolving technologies or industries which can be the source of future economic growth in other areas;

(4) projects which have a direct link to the national defense capability of the country; and

(5) projects in regions which are suffering severe long term unemployment.

ADDITIONAL POWERS

SEC. 9. The Corporation may purchase or guarantee loans made by other institutions which meet the criteria established for activities of the Corporation, and make recommendations to the appropriate Federal officials on trade policy, tax policy, and labor policy, based on its experience with assistance to particular industries or regions.

Mr. BAKER. I yield back my time.

Mr. President, the time for the two leaders having been yielded back, we reach the point where the Senator from Alabama is to be recognized on special order. I do not see him in the Chamber at this moment, so, in order to inquire about the situation, I suggest the absence of a quorum. I charge the time for the quorum to the time reserved to me under the special order for Senator MATTINGLY.

The PRESIDING OFFICER (Mr. HATCH). The clerk will call the roll.

The Assistant Secretary of the Senate proceeded to call the roll.

Mr. DENTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR DENTON

The PRESIDING OFFICER. Under the previous order, the Senator from Alabama (Mr. DENTON) is recognized for not longer than 15 minutes.

Mr. DENTON. Thank you, Mr. President.

BEAR BRYANT NATIONAL FOREST

Mr. DENTON. Mr. President, I have a bill to introduce, which I shall send to the desk and ask for its immediate consideration.

Mr. President, I am today introducing a bill to rename the Talladega National Forest in Alabama, one of our State's greatest natural treasures, as the "Bear Bryant National Forest."

On Thursday, January 26, I made lengthy remarks before this distinguished body about the death of Coach Paul "Bear" Bryant, the winningest football coach of all time. On that occasion, I also placed into the RECORD several news articles and editorials about Coach Bryant's career and his death. But no oratory nor written memorial can adequately do justice or pay tribute to this true man among men. Nor can a statue or building or other edifice serve sufficiently to express for posterity what this man gave to us in Alabama, indeed to our country as a whole.

It is only fitting, however, that we, as a nation, attempt to honor, in some small measure, that legendary figure.

When I am asked why I chose a national forest as the appropriate vehicle for a tribute to Bear Bryant, I am inclined to say, "It is, after all, the largest thing I could find." Perhaps it is more appropriate to say that our national forests were created and are maintained for posterity as prime examples of the natural resources that helped make our country great. It was the challenge of mountainous regions and primeval forests that helped mold the people who settled our land into a strong and determined nation.

It is fitting that we should place Bear Bryant's name on one of our national treasures. His career was a prime example of the human resources that helped forge a great nation. His leadership helped mold the lives of many great athletes of our time, a leadership that spans several generations, since many of his students, now coaches themselves, carry on his work of shaping new generations of young men into better athletes and better people.

I recall that during the Super Bowl there were four former Alabama players, all of whom played under Bear, and in the league championship game just before that there were five Alabama athletes on the first teams who had played under Bear Bryant.

I know that my good friend the distinguished majority leader, Senator BAKER from Tennessee, expressed the sentiments of my colleagues in his remarks on this floor last Wednesday. I especially commend him for those remarks since I, too, remember some of those Saturday afternoons when Coach Bryant's teams were less than polite to Tennessee teams.

But it was indication of Bear's single achievements, in the form of characteristic come-from-behind victory, when Alabama trailed Tennessee in the 1972 match 10 to 3, with less than 3 minutes remaining on the clock. Half a minute and two touchdowns later, Alabama had taken the lead, 17 to 10, and went on to win the game. The occasions on which a Bryant Alabama team turned a half-time deficit into victory are too numerous to mention on this occasion. It is, however, a practice we in Congress should note and attempt to emulate, as we play the game and try to pull our Nation out of a hole.

Many of my colleagues have expressed on this floor and to me personally, their sadness over Coach Bryant's death. I hope that all my colleagues will join me in approving the bill I introduce today as a small tribute to the great Paul "Bear" Bryant.

Mr. President, I have several newspaper articles and editorials which appeared in Alabama newspapers following Coach Bryant's death. I ask unanimous consent that the articles may be printed in their entirety following my remarks.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Birmingham Post-Herald, Jan. 27, 1983]

PAUL "BEAR" BRYANT

There will never be another like Paul "Bear" Bryant, who died unexpectedly yesterday at age 69.

Someday, a football coach may surpass the 323 victories that his teams put in the record books, or the 24 consecutive appearances in bowl games by Bryant coached University of Alabama teams. It may be that some coach will match his record for producing coaches at all levels of the game. And, no doubt, other coaches will do as well economically as Bryant did in non-football ventures.

But it is extremely unlikely that any individual can combine all of these achievements, produce the deep personal loyalty found among his former players, assistants and fans and acquire the legendary status that the Bear assumed years ago.

This adulation—at times it even bordered on deification—was a source of embarrassment to the Crimson Tide coach and athletic director. But everything Bryant did and said contributed to the furthering of the legend.

Even when he confessed to what he considered mistakes in his early years of coaching—his first year at Texas A&M when he drove several players away from football—or in the latest game that Alabama lost; the Bear's followers took it as evidence of the man's greatness. Which it was. No man was a harsher critic of himself than Bryant.

Paul Bryant didn't start out at the top. The path from a boyhood on an Arkansas farm—during which he acquired his nick-

name by wrestling a carnival bear—to the riches and acclaim of his later years at the University of Alabama was filled with hard work and dedication.

Bryant joked about being not very talented as a player or a coach. He was the "other end" during his playing days with the Crimson Tide and All American Don Hutson. And it is true that the football formations and plays his teams used were often adapted from the innovations of others.

But nobody could match him in getting the best possible performance out of young men. Nor could any coach see as clearly the strengths and weaknesses of both his own team and their opponent and adapt the game plan accordingly.

The Bear didn't always feel that his teams had reached their full potential. When that happened, he always assumed the blame himself, never allowing it to fall on the players, and he always gave full credit to opponents. There were no alibis.

But the Bryant legend is more than what took place between the goalposts on a Saturday afternoon.

Off the field, he fostered a remarkable loyalty among those who had played or worked for him. His former players and assistants kept in touch to a far greater degree than many at other schools do with their former coaches. Even the players he felt obligated to discipline at one time or another have this loyalty.

While he achieved a considerable measure of personal fame and fortune from football, Coach Bryant never forgot that it is a coach's job to help young men develop into responsible adults and that football is only a part of life, a part of a college education. His players were not allowed to neglect their scholastic work.

He even returned some of the money his fame had earned to his alma mater for academic purposes.

Whether it was a premonition or, as he said, that he had lost the extra spark needed to coach young men, Bryant retired from coaching after the Liberty Bowl game. Despite some disappointments earlier in the season, he left the playing field a winner with the Tide's decisive triumph over Illinois in that last game.

And that's how we will always remember the Bear, as a winner.

No other word is needed to describe Paul "Bear" Bryant.

[From the Birmingham Post-Herald, Jan. 27, 1983]

REAGAN PRAISES THE BEAR AS "HERO . . . LARGER THAN LIFE"

Gov. George C. Wallace ordered flags flown over state buildings to be lowered to half staff until Saturday, the day after retired Alabama football Coach Paul "Bear" Bryant's funeral.

"Paul Bryant was a dear friend of mine and the greatest coach in the history of collegiate football," the governor said.

"He was a man among men and brought great fame and honor to Alabama. No amount of words will permit me to describe the loss we have suffered with Coach Bryant's passing. He was widely loved and respected by all. I pray that God will bless and keep his fine family—Mary Harmon, the children, grandchildren and all at this time of great sadness."

President Ronald Reagan also praised Bryant as a hero who "made legends out of ordinary people."

After returning from Boston last night, Reagan called Bryant's wife, Mary, to express his condolences about the legendary coach's death of a heart attack earlier in the day.

The president then issued a statement saying that, "Today, we Americans lost a hero who always seemed larger than life.

"Paul 'Bear' Bryant won more college-football games than any other coach in history and he made legends out of ordinary people. Only four weeks ago, we held our breaths and cheered when 'The Bear' notched his final victory in a game named, fittingly, the Liberty Bowl.

"He was a hard, but loved taskmaster. Patriotic to the core, devoted to his players and inspired by a winning spirit that would not quit, Bear Bryant gave his country the gift of life unsurpassed. Embracing the impossible seemed easy, he lived what we strived to be."

A stunned Lt. Gov. Bill Baxley announced Bryant's death to the Alabama Senate while it was in session.

Baxley and Bryant were close friends.

His voice choking, Sen. Ryan deGraffenried of Tuscaloosa praised the coach.

DeGraffenried said he had known Bryant "since I was a kid and lived down the street from him. He probably contributed more to the University of Alabama and the education of many youths throughout the state than any man I ever knew.

"I know that God will grant to him the compassion of living with all the great men who have gone on in the past. I know the basic principles he has stood for will continue to be felt in this state. It's a sad day for his family. It's a sad day for this state."

The House of Representatives, meeting two hours later than the Senate, paused for silent prayer at the beginning of the session.

House Speaker Tom Drake, who was an assistant coach under Bryant, said, "He was certainly a great man, one of the greatest I've ever known."

Drake said he talked with Bryant last week and the coach said he planned to visit the Legislature, either this week or next.

Rep. Roy Johnson of Holt in Tuscaloosa County, House speaker pro-tem, called Bryant a legend.

"He was a legend and an inspiration to the young people of this state, and his life, his accomplishments, have enhanced the image of Alabama and the University of Alabama throughout the nation and the world," Johnson said.

Rep. Pete Turnham of Auburn read the House a statement from Dr. Hanley Funderburk, president of Auburn University.

"Coach Bryant was indeed one of Alabama's great assets, setting standards of excellence and quality that made all of us reach for higher and greater successes in life."

Word of Bryant's death spread quickly in Washington yesterday as members of Alabama's congressional delegation called each other in disbelief.

Teary-eyed aides telephoned Alabama to confirm the tragic news and then began issuing a stream of tributes to the former University of Alabama football coach.

Vice President George Bush said he was "shocked and grieved by the news of Coach Bryant's death.

"The country has lost an authentic hero—not in terms of the victories his team won on the football field, but the inspiration and ideals he imparted through generations of young Americans. Paul Bryant was more than a great coach. He was a great teacher."

Bush entertained Bryant at the White House last March, a few hours before the coach appeared as the guest of honor at a $125-a-plate, black-tie dinner held to raise money for academic scholarships at Alabama.

Bryant looked out over the banquet audience of 1,000 spotting dozens of former players from Kentucky, Texas A&M, Maryland and Alabama. Then he told the men he had coached that because they came to the dinner, they could spare themselves the expense of attending his funeral.

"Mary Harmon always tells me when I get to talking about going to these funerals that you should go to see people when they're living . . . Mother, if I croak now just go ahead and lay me out," Bryant said.

Sen. Jeremiah Denton, R-Ala., who arranged the banquets last year, said he will talk with Bryant's relatives before he and other members of the state delegation make additional plans to honor the coach.

"Bear Bryant leaves behind a fine family, but his greatest achievement may be found in an even larger family," Denton said.

Sen. Howell Heflin, D-Ala., was told of Bryant's death at a Washington airport just as he was leaving to speak at a convention in New Orleans. The senator is expected to return to Alabama for the funeral.

"Alabama and the nation have lost a great monument—a hero—a leader of men," Heflin said. "However his memory and his legend will live with us forever.

"Coach Bryant will be remembered for far more than the 323 victories that stand by his name. That alone would be a tremendous achievement, but even more important is the positive influence he has had on so many lives—so many that there can never be an account."

Rep. Richard Shelby, D-Tuscaloosa, said he was shocked by the loss of a neighbor and friend.

"Not only has the sports world lost a giant of a man, but the University of Alabama, the state of Alabama, and the nation have also suffered a great loss. There will never be another man like him."

Mr. DENTON. Mr. President, I send this bill to the desk and ask for its immediate consideration.

I also ask that the Chair recognize my friend and distinguished colleague, the senior Senator from Alabama (Mr. HEFLIN), as he is an original cosponsor of this bill and would also like to make remarks with respect to Bear Bryant.

I thank the Chair.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

Mr. HEFLIN. It has been cleared on this side of the aisle.

The PRESIDING OFFICER. The Senator will send the bill to the desk, please.

The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 312) to change the name of the Talladega National Forest in Alabama to the Bear Bryant National Forest.

The Senate proceeded to consider the bill.

Mr. HEFLIN. Mr. President, I rise to thank my colleague from Alabama for his foresight and wisdom in honoring the memory of Paul W. "Bear" Bryant.

I have known Coach Bryant for many years. I attended his funeral, which was a very sad occasion, yet it was an outpouring of love and affection for a great American.

As we drove some 60 miles from the First United Methodist Chruch in Tuscaloosa to Elmwood Cemetery in Birmingham, there were thousands and thousands of people lined up on the side of the road to honor him. I am told that one of the television networks stated there were 1.5 million people who were lined up on the side of the road to pay tribute to Coach Bryant.

Children in school were there with their hands over their hearts, as an example of their love and affection for this great American. Motorists stopped their cars on the side of the road, also with their hands over their hearts, to honor his memory.

I join with my colleague in sponsoring this bill. I think history will recall Paul Bryant as being the No. 1 football coach in college football. There have been great coaches, but I feel that Bryant will go down in history as the No. 1 college football coach of all time.

He was truly a winner. He strived to be No. 1 in all that he did. He instilled in his players and in his coaches the desire to be the best they could be. He instilled in everyone who came in contact with him the desire to achieve and the desire to be a winner. He was a magnet for people of different persuasions and thoughts. Throughout his life he accomplished a great many things.

He certainly was a leader in race relations. His early recruitment of black football players to play on the Univerity of Alabama's team was a step that led to an orderly integration process in the educational institutions of the State of Alabama.

Coach Bryant was a leader of men, and it is fitting that we honor him by naming a forest for him where there are tall and sturdy trees. Those tall and sturdy trees are of many varieties and types, but they all reach for the sky, reach upward toward Heaven.

He produced strong, sturdy football teams and instilled strong, moral values and a sense of dedication in the men he coached. He will surely be entered in history as truly a great American.

I believe there will be other measures introduced to honor Coach Bryant, and I want to participate in those, as I have in this measure.

Mr. President, I ask unanimous consent that Senator HUDDLESTON be added as a cosponsor. Senator HUDDLESTON asked me to make this request since Paul Bryant coached at the University of Kentucky and was his close friend.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DENTON. Mr. President, I move the adoption of the bill.

The PRESIDING OFFICER. If there is no amendment, the question is on the engrossment and third reading of the bill.

The bill (S. 312) was ordered to be engrossed for a third reading and was read the third time, and passed as follows:

S. 312

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the national forest know as Talladega National Forest shall be know and designated hereafter as Bear Bryant National Forest, and any law, regulation, document, or record of the United States in which such forest is designated or referred to under the name of Talladega National Forest shall be held to refer to such forest under and by the name of Bear Bryant National Forest.

Mr. DENTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HEFLIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. DENTON. Mr. President, I wish to make other personal remarks about coach Bryant.

In the last generation it was popular in England and gained one status to say "Lloyd George knew my father." I am very proud of the fact that I, too, knew Coach Bryant, and that my uncle Troy, according to Bear, gave Bear his first job.

I learned this when I was running for the Senate, and asked Bear if I could come up in the tower with him. It was a big privilege. He let me come up and I asked him if he remembered my Uncle Troy, at whose funeral Bear had been a pallbearer. He said, "Oh, yes, I remember Troy. He gave me my first job, but the bleep-bleep only paid me $7 a week."

So in the spirit of "Lloyd George knew my father," and as a personal note of my love for the man who was the best friend my uncle had, I want to say that I would have been at his funeral had I not been in the hospital myself that day; that I loved him and his wife Mary Harmon, and I hope the Nation approves the naming of this forest in the same manner that Senator HEFLIN and the rest of Alabama and I do.

Mr. HEFLIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The Assistant Secretary of the Senate proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR SPECTER

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania is recognized.

THE EMERGENCY MORTGAGE ASSISTANCE ACT

Mr. SPECTER. Mr. President, beyond the cost of today's record-high unemployment is the fear which many have of losing their homes. Adverse economic conditions have reduced the capacity of homeowners to continue their monthly payments. The result has been a significant increase in delinquencies on residential mortgages that have resulted in massive foreclosures.

I recently toured a recession-worn region and spoke with citizens in White Oak, a suburb of Pittsburgh, Pa., about the prevailing economic climate. I sensed a mood of tremendous anger and disappointment as I heard one horror story after the next. Almost all of these people were dedicated workers, formerly employed in steel and other heavy industrial businesses. Today, they are threatened by the loss of their homes. This meeting impressed upon me the need for Federal mortgage assistance for those who through no fault of their own are faced with foreclosure.

Mr. President, I ask unanimous consent that a letter that I sent to President Reagan expressing my concern for this unfortunate condition be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., January 20, 1983.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I would like to share with you the very strong feelings and frustrations expressed last night at an "Open House" attended by approximately 400 Pennsylvanians at White Oak, which is in the suburbs of Pittsburgh. I had invited citizens from the area to meet with me on the problems of unemployment which are especially acute in that area because of its heavy reliance on the steel industry.

There was tremendous anger and disappointment about the loss of jobs, mortgage forclosures, unfair competition from foreign steel imports, foreign aid, the closing of foreign markets for U.S. goods and the general failure of Government to aid them on their immediate and pressing problems.

I responded that I had met with you recently (albeit on another issue—the Crime Bill) and that I knew of your deep concern about their problems. I told them about the six-week extension of unemployment benefits which was enacted last month and the new gas tax which would provide jobs with special help for the steel industry because of the heavy need for extra steel for the bridges and roads. In cooperation with the U.S. Agriculture Department and Pennsylvania officials, we were able to secure a spe-

cial allotment of food for the community from Federal surpluses. All of this, I must report, was regarded as much too little and too late.

In preparing your State of the Union speech and your budget proposals, I urge that extra attention be given to the workers from the steel industry, and other similarly situated industries, because of their special anguish. I respectfully suggest that it is imperative that a jobs program be tailor-made for displaced workers from such industries. I further urge that assistance be provided on foreclosures on conventional as well as VA and FHA mortgages.

Mr. President, I have the sense that we are sitting on a volcano which is about to erupt unless immediate, positive and forceful steps are taken through your leadership in cooperation with the Congress.

Sincerely,

ARLEN SPECTER.

Mr. SPECTER. Mr. President, this situation has reached crisis proportions in Pennsylvania, where a near record 1-percent foreclosure rate currently exists. A recent survey indicates that about 23,000 homeowners in the Pittsburgh area alone will be facing delinquency when their unemployment benefits expire. An estimated 2,000 homes in the 4-county area of Pittsburgh are at some stage in the foreclosure process. This urgent situation also exists throughout other regions of Pennsylvania. In Philadelphia, where unemployment is close to 13 percent, the rate of foreclosures has increased 43 percent since 1981. With an astonishing 810 owner-occupied properties placed on the block for Philadelphia's sheriff auction this month, community activists have organized to revoke a moratorium on foreclosure sales similar to the one instituted earlier this month in Pittsburgh. These Depression-style moratoriums represent a desperate response to assist those unemployed who are being evicted from their homes.

As the recession continues to inflict financial distress among thousands of families, the need for homeowner protection from foreclosure becomes more critical. Apart from the personal anguish of the threatened homeowner, delinquency has imposed a hardship on this already hard-pressed lending community, costing millions of dollars per month in cash flow.

To address this tragedy, I am introducing the Emergency Mortgage Assistance Act of 1983. The purpose of this bill is to prevent mortgage foreclosures, resulting from the temporary loss of employment, by offering assistance to defray mortgage expenses. Short-term aid, up to 18 months, would be available to those residing in labor surplus areas who are receiving or have exhausted unemployment benefits and are 60 days delinquent in making any mortgage payment. The program would be administered by the Secretary of Housing and Urban Development and financed through a fund established within HUD specifically for mortgage assistance. The Secretary would make payments to the mortgagee where the requisite delinquency occurred. These payments by HUD would constitute a lien against the residence thus assuring the Government of repayment as a secured creditor. Once the homeowner was reemployed, the amount of the special HUD loan would be repaid by a 10-percent increase on the mortgage payment.

There is at the present time a temporary mortgage assistance program administered by HUD. Under existing law, the Secretary of HUD provides 18 months of assistance for HUD mortgages only, with an option of a contract for an additional 18 months. The legislation which I am introducing today is similar to that existing program except that this bill would apply to all mortgages whether FHA, VA, or conventional.

This legislation offers hope. For the unemployed enduring severe economic and personal hardship, the Emergency Mortgage Assistance Act provides the opportunity for these workers to retain their homes until economic conditions improve. The temporary financial assistance can be a long-term cost-saving measure because the Federal Government can avoid making costly outlays to fund new assisted housing structures necessary to shelter displaced families. To qualify for assistance, a region must have an unemployment rate in excess of the national average by more than 1 percentage point.

Today, residential foreclosures have reached a 20-year high, with approximately 1.6 million homes delinquent in payment or in the process of being foreclosed. The Emergency Mortgage Assistance Act is a necessary and positive step toward recognizing the desperate situation for many threatened by the imminent loss of their homes.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 313

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Mortgage Assistance Act of 1983.".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) the Nation is in a severe recession and that the sharp downturn in economic activity has driven large numbers of workers into unemployment and has reduced the incomes of many others;

(2) there are some areas which have extremely high and extremely persistent unemployment and where unemployment benefits have been exhausted;

(3) as a result of these adverse economic conditions the capacity of many homeowners to continue to make mortgage payments has deteriorated and may further deteriorate in the months ahead, leading to the possibility of widespread mortgage foreclosures and distress sales of homes; and

(4) many of these homeowners could retain their homes with temporary financial assistance until economic conditions improve.

(b) It is the purpose of this Act to provide authority which will prevent widespread mortgage foreclosures and distress sales of homes resulting from the temporary loss of employment and income through a program of emergency mortgage assistance payments to homeowners to defray mortgage expenses.

BASIC AUTHORITY

SEC. 3. (a) The Secretary of Housing and Urban Development is authorized to provide assistance on a temporary basis in the form of emergency mortgage assistance payments to or on behalf of individuals and families who, as a result of financial hardship in areas of high unemployment,

(1) have received written notice of dispossession from a principal residence by reason of foreclosure of any mortgage or lien or

(2) are receiving unemployment benefits or have exhausted eligibility for such benefits and are in excess of 60 days delinquent in making any mortgage payment on a principal residence.

(b) Such assistance shall be provided for a period of not to exceed eighteen months or for the duration of the period of financial hardship, whichever is shorter.

(c) The Secretary of HUD shall make the mortgage payment to the mortgagee which payments shall be considered a lien against the principal residence.

(d) At the expiration of the period described in subsection (b), the mortgage payment made by such individual shall be increased by ten percentum until the amount of such assistance has been repaid.

SEC. 4. The Secretary of HUD shall establish a fund specifically for mortgage assistance payments authorized by Section 3(c) of this Act.

SEC. 5. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Mr. SPECTER. Mr. President, I thank the Chair. I yield the floor.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business that will not extend past 12 noon where Senators may speak for 2 minutes each.

THE DEFENSE BUDGET

Mr. GOLDWATER. Mr. President, I have just returned from the first hearings in the Armed Service Committee where Secretary of Defense Weinberger was testifying. I had to say to him sitting there that I was reminded of the 1930's. That is one of the curses of getting older, you can remember. But I do not like to remember my country when we were not ready, and we were not ready. In the 1930's, we were in the middle of a big depression, such as we are in right now, but we were not

spending money in adequate amounts to allow us to do our constitutional duty of defending our people in a proper way. I remember it took 4 years, Mr. President, to buy the B-17 bomber—4 years.

Now, we are hearing from all sides, "Cut the defense budget." Well, I can tell you we can cut the defense budget. I cut $2 billion out of my little subcommittee last year.

But one Senator has suggested that defense outlays be reduced in 1984 by $7 billion below the $8 billion reduction already reflected in President Reagan's submission to Congress.

These estimates reflect only outlay savings in the first year of spending under new budget authority. Spending authorized in prior years compromises approximately 35.3 percent of fiscal year 1984 outlays for the Department of Defense. The following options represent program slippage by 1 year—making fiscal year 1984 a "skip" year—and do not indicate program cancellations resulting in greater out-year savings in both budget authority and outlays. Program cancellations would produce greater savings, but not all of it would be seen in the 5-year period. Further, the cost of any replacement capability would have to be considered, thus reducing total net savings and the net savings in the 5-year program.

The following outlines possible reductions in budget authority which could be made to achieve such outlay savings. I am going to put these options in the RECORD, but I did want to read option No. 1.

If we added the $7 billion reduction to the $8 billion already, here is what would happen:

Army procurement: All aircraft, all missiles, all weapons and tracked combat vehicles, all ammunition, and all tactical and support vehicles.

Navy procurement: All aircraft, including the F-14, F-18, A-6E, AV-8B, EA-6B, all weapons, shipbuilding and conversion, and ship support equipment.

All Marine Corps procurement.

All Air Force procurement. The Air Force would lose the B-1, the F-16, and the F-15, and all munitions.

Now, that sounds rather impossible. But when you start chopping amounts like $15 billion out of a defense budget—and I can assure that on this floor there is going to be more shotgun shooting in that budget than anything we have gone through in a long time, because it sounds possible. More people say, "I am all for defense, but I don't know much about it." And that is about the truth. So they just shoot off at the defense budget, not realizing that we are not in the best position in this world today as far as our defenses are concerned. We are behind the Soviets. I am not too concerned about that, but we are not strong enough. And if we are ever challenged, our freedom is challenged, I am afraid we are in for trouble.

Mr. President, I mentioned that I would put these options into the RECORD. I ask unanimous consent that they be printed in the RECORD.

There being no objection, the options were ordered to be printed in the RECORD, as follows:

[In billion of dollars]

	Reduction in BA	First-year reduction in OL
Option 1		
Eliminate entirely the following accounts:		
Army procurement:		
Aircraft	3.472	0.172
Missiles	3.089	.482
Weapons and tracked combat vehicles	4.934	.283
Ammunition	2.334	.329
Tactical and support vehicles	1.148	.088
Navy procurement:		
Aircraft (includes F-14, F-18, A-6E, AV-8B, EA-6B)	11.127	1.439
Weapons	4.029	.560
Shipbuilding and conversion	12.699	.737
Ship support equipment	.731	.090
Marine Corps procurement	1.852	.093
Air Force Procurement:		
Aircraft (includes B-1, F-16, F-15)	22.707	2.078
Munitions	1.192	.558
Total	69.314	6,909
Option 2		
No Procurement in fiscal year 1984	94.088	12.727
Option 3		
No research and development in fiscal year 1984	29.622	17.394
Option 4		
Reduce the number of men and women in uniform by 15 percent (324,750); pay reduction equals [2]	7.000	7.000

[1] Under option 1, future military capability would be reduced by approximately 29 ships, 740 combat aircraft, and 3,500 combat vehicles. This also means no spare or repair parts and implies draining war reserves to continue training.

[2] Or just reduce pay and benefits by 15 percent.

DOUBLECROSSES AGAINST PEOPLE OF CHINA

Mr. GOLDWATER. Mr. President, if there is any advantage at all to having to recuperate from an illness or an operation, it lies in the fact that one has ample time to read. Not just to read, but to reflect, and I took advantage of this opportunity, recovering from my recent surgery, to review in extended length the subject of the United States and its recent history with the people of China, whether they be on the mainland or Taiwan, and the Government of China, whether it be the nationalist government at Taipei, or the Communist government at Peking.

It carries me back to a paper that I had written long enough ago for probably most people to have forgotten, but which was prompted by President Carter's, in my opinion, unconstitutional abroagation of a mutual defense pact with Taiwan. Some might recall that I went to court over this; I won in the lower court, but in the court of appeals, which surprised no one, it was turned around. The Supreme Court ducked the issue, voided both lower court decisions, and tossed the subject back for Congress and the President to work out. Thus, the state of the law on the subject is uncertain and unsettled.

The more I read of this period of history, say almost covering this century, the more I was led to believe that there has been nothing but a long series of doublecrosses on the part of the United States against the people of China. Now, I did not say the Government of China because they have a Communist government covering the mainland, and they have a nationalist democratic form of government covering Taiwan. But the fact remains that, where we had the opportunity to be of great service to these people, who historically have been amongst our closest friends on Earth, we did nothing but tell them lies, act dishonestly toward them, and continue to deal with them in double talk and misrepresentation.

I hate to say this, because I know my President feels that he has done nothing to let down the Government of Taiwan, but it has continued into this Republican administration, and is so firmly entrenched now that I can cite cases where certain officials are not allowed to visit Taiwan, because it might be embarrassing to our Government.

Our Secretary of State is now in mainland China, and what he is going to talk about, I have no idea, but if it is history, I may have a few comments to add. What can be talked about, I do not know, because we have absolutely nothing in common unless we might call the Soviet Union a possible enemy in common. But that can require a lot of proving also. I do not think anybody living in the United States will ever see the day when our kowtowing, knee-bending attitude toward Communist China will produce anything of value to our country, even including what friendship, or proferred friendship, usually brings, reciprocity.

Mr. President, I feel so keenly about this, and I guess I always will, that I ask unanimous consent to have printed in the RECORD a pamphlet arguing against the abrogation of the defense treaty. It was published by The Heritage Foundation in 1978 and carries me as the author, although I would not be honest if I did not say that I had adequate, complete help on this from a competent member of my staff.

There being no objection, the pamphlet was ordered to be printed in the RECORD, as follows:

CHINA AND THE ABROGATION OF TREATIES

INTRODUCTION

(By Barry M. Goldwater)

Little or no public debate has occurred on the role of Congress in the abrogation of treaties. Yet, this subject is at the forefront of one of the critical foreign policy issues of the 1970's, our government's China policy.

Before Secretary of State Cyrus Vance went to mainland China last August for talks with the new triumvirate ruling that territory, he was urged by Senator Edward M. Kennedy to simultaneously recognize the People's Republic of China (PRC) and consider our defense treaty with the Republic of China on Taiwan (ROC) as having lapsed. That President Carter could so terminate the treaty at his own discretion was assumed, the theory being that after the United States cuts diplomatic relations with Taiwan, we can consider the defense treaty at an end because there is no government to deal with.

This was not the first time I had heard of the concept under which the defense treaty would be considered as having died a quiet death upon diplomatic recognition of the Communist regime. A high official has informed me that the Legal Adviser's Office in the Department of State was studying this contingency even before Senator Kennedy's trial balloon, and it is apparently a view held by several subordinate officers at the Department.

Whether Secretary Vance or any of the officials accompanying him to Peking actually broached this contingency in talks with the Communist Chinese is unknown, but the subject requires careful scrutiny because it represents the latest turn in thinking of those persons who are bent upon granting recognition to the PRC on its own terms.

It is known for certain that one of the announced indispensible requirements for a so-called normalization of relations between the PRC and the United States is abrogation of the Mutual Defense Treaty with Taiwan. PRC Vice Foreign Minister Yu Chan and Vice Premier Li Hsien-nien each made it clear to visiting editors of the *Wall Street Journal* in October 1977 that the Communist government is "absolutely inflexible" on this principle. In view of the unyielding position among PRC leaders and the seeming willingness of some American officials to accept the demand, it is urgent that a public debate be initiated on the threshold question of whether or not the President has constitutional authority to do, on his own, what the PRC is demanding.

And, although the immediate question arises in connection with the defense treaty between the Republic of China and the United States, it is also important to explore the principle involved because it touches every one of our nation's treaty commitments. If the President can break the treaty with Taiwan on his own authority, then he can withdraw from NATO or pull out of any other treaty without consulting Congress or getting its consent.

At the outset, it should be clarified that my argument is not intended to cover executive agreements or international agreements other than formal treaties. My concern at this time is only with treaties in the constitutional sense of compacts between nations or other international entities which have been formally signed, submitted for advice and consent to the Senate and ratified after having received the necessary two-thirds approval by the Senate. Since the defense treaty with the ROC is exactly such a constitutional treaty my discussion of the treaty termination power will address only that species of international instrument.

Nor shall I make any brief for the Senate or Congress as possessing the power to compel the President to denounce or abrogate a treaty, although there is strong evidence that such a legislative power exists. Again, that proposition is extraneous to the matter at hand, which is not an effort by Congress to break the treaty with Taiwan, but a proposed assertion of power for the President to arbitrarily force a decision upon the Congress as a fait accompli about which it can do nothing.

Also, let me record my strong opposition to any policy of normalization with Communist China that calls for a break in our relations with the free Chinese on Taiwan and the repudiation of our defense treaty with them. I am convinced such a policy of kowtowing to the PRC would dishonor the United States, increase the risks of a world conflict and run counter to constitutional provisions demanding a role for Congress in the treaty process.

Today, Taiwan has almost 17 million people, more than Ireland, Norway, and 120 other countries of the world. Its economy ranks second only to that of Japan in the Pacific. The ROC is currently America's 13th largest trading partner. Two-way trade between the United States and Taiwan totaled $5.5 billion in 1977, compared with $374 million between the United States and the PRC.

Acceptance of the Communist Chinese demands would be unprecedented in American history. No President of the United States has ever unilaterally abrogated a treaty with any foreign government in violation of the provisions of that treaty. Actually, we have a remarkable record of morality in keeping our treaty promises. The motto that "our word is our bond" has been a matter of faith for the American people and for foreign nations with whom we have dealt. If President Carter were now to accept the proposal of advisors who recommend that we recognize the PRC and abrogate our defense treaty with Taiwan, it would leave a permanent stain on our history.

CHAPTER 1

Overview: Intent of framers

Admittedly, treaty abrogation is a rather novel subject. There are virtually no court cases and very few academic papers on the subject. What we do have to go on is our history as a Republic, several statements by the Founding Fathers, and common sense.

From these, my own reading of the Constitution is as follows:

No President can terminate a treaty unless he first obtains the consent of Congress.

The Constitution demands a role for Congress in the abrogation of treaties, either in the form of joint action by the President and two-thirds of the Senate, or by the President acting together with both Houses of Congress.

Any President who would violate the Constitution on such a major matter as breaking faith with the nation's treaty obligations would run the risk of impeachment.

In *Foreign Affairs and the Constitution*, one of the few works to consider the question, the noted authority Louis Henkin states:

"In principle, one might argue, if the Framers required the President to obtain the Senate's consent for making a treaty, its consent ought to be required also for terminating it, and there is eminent dictum to support that view."

Yet, Henkin adds:

"In any event, since the President acts for the United States internationally he can effectively terminate or violate treaties, and the Senate has not established its authority to join or veto him."

It is true the President could, under his power of general control over foreign policy, effectively weaken the credibility of our national commitment under a defense treaty, such as NATO, by ordering a withdrawal of most American military forces from the foreign area involved, but he cannot unilaterally destroy the international legal obligations of our country under a formal treaty without the consent of the Senate or Congress. Indeed Henkin does not claim the President can *legally* terminate or violate treaties. He writes only that the President has the ability to "effectively" breach treaties. This distinction would be of critical importance in any impeachment proceedings instituted by a Congress which considered the President to have violated the limits of his constitutional discretion. It also would have overriding weight in any judicial action challenging the legal validity of the President's purported denunciation or abrogation of a treaty.

In observing that the Senate has not "established its authority" to join or veto the President, Henkin is no more than restating the fact that there has not yet been a definitive court decision squarely settling a conflict between the Executive and Senate in the Senate's favor.

Henkin would agree, I presume, that it is for the judicial branch to say what the law is, not for the President to create law by fiat until the courts speak. And, as we shall see, there is no basis in historical practice for claiming the President has established his authority to denounce or abrogate treaties without legislative participation in his decision. To the contrary, the overwhelming weight of precedents supports a role for the Senate or Congress in treaty abrogation.

The records of the Constitutional Convention and the State ratifying conventions contain little discussion of how a treaty is to be rescinded. But it is well-known that the Framers were concerned with restoring dependability to our treaties and were anxious to gain the respect and confidence of foreign nations. It would hardly instill confidence in other nations if a single officer of our government could abrogate a treaty at will without any check from another branch of government.

Also, it is beyond dispute that the Framers were worried the treaty power could be exercised to damage sectional interests. Repeated flareups occurred at the Constitutional Convention in which various delegates expressed fears that their region might be harmed if treaties could be easily made.

In particular, treaties of commerce, peace and alliance were mentioned. Spokesmen for the western settlers were afraid navigation rights on the Mississippi would be given away by a treaty, and George Mason suggested the treaty-making power could "sell the whole country" by means of treaties.

Thus, the Framers sought to give each section of the country an influence in deciding upon treaties because of their possible adverse effect upon strong economic or political interests of particular States or areas. It is logical to assume the Framers were as interested in protecting these same regional interests by making it difficult to revoke useful treaties as they were in protecting those interests by guarding against harmful treaties. George Mason alluded to this situation when he warned against allowing one treaty to abridge another by which the common rights of navigation had been recognized to the United States.

This is not to say that the Framers would have been as excited about a defense treaty with a small republic 6,000 miles away as they were over treaties involving local fishing or boundary rights, but it is to indicate that the 1954 treaty and all other U.S. treaties are protected by the same procedural safeguard as those treaties about which the Framers were especially sensitive. Since the text of the Constitution makes no distinction between different groups of treaties—it does not single out those commercial or boundary treaties, which the Framers did not want to have discarded without the check of legislative deliberation, from treaties of all other kinds—the obvious conclusion is that treaties of whatever nature are covered by the same protective mantle before cancellation. If any one group of treaties is secured against repeal without legislative consent, then surely all other treaties enjoy the same security absent any textual or historical evidence to the contrary. All treaties were to be dealt with in the same way.

Proof that the Framers meant for treaties to be kept and not broken at pleasure is found in their emphasis on gaining respect for the new nation among other countries by being faithful to our treaties. James Madison, John Jay and James Wilson each recognized that the ease with which treaties could be and were being broken under the Articles of Confederation was a major defect causing injury both to our respectability and power abroad. Madison, in the preface to his notes on debates in the Constitutional Convention, specifically identifies this failing as being one of the deformities of the Articles which the Constitution was designed to correct. John Jay pinpoints this disease in number 22 of *The Federalist Papers*. Wilson regarded violation of the "sacred faith of treaties" as "wicked" and contrary to our interests in gaining respect among other nations. Thus, the Framers wanted to make it more difficult to violate treaties, not easier. Surely they would not have attempted to remedy the fault by substituting for the previous system one that was equally susceptible to abuse by a single official as the earlier one had been to the whims of individual states.

Another sign of the purpose of the Framers is in their creation of a system of checks and balances. In this age of concern about what is described as the Imperial Presidency, it is remarkable that anyone would contend the President is unchecked and unaccountable in a matter of such grave importance as breaking out treaties with other countries. We have seen that they wanted the nation to keep its treaties. Therefore, it is difficult to believe that the Framers, who created the President and Senate as checks upon each other in completing a treaty, did not intend a similar check in the reverse situation, the revoking of a treaty.

As the scholar-jurist, Supreme Court Justice Joseph Story wrote in his *Commentaries on the Constitution of the United States* in 1833:

"It is too much to expect, that a free people would confide to a single magistrate, however respectable, the sole authority to act conclusively, as well as exclusively, upon the subject of treaties . . . there is no American statesman, but must feel, that such a prerogative in an American president would be inexpedient and dangerous."

Story adds:

"The check, which acts upon the mind from the consideration, that what is done is but preliminary, and requires the assent of other independent minds to give it a legal conclusiveness, is a restraint which awakens caution, and compels to deliberation."

The same fundamental principle that guided the Framers in providing that the President can make treaties only with the added deliberation called for when a branch of the legislature must jointly decide the question applies with equal force to the power of annulling treaties. To use Story's words about treaties, "this joint possession of the power affords a greater security for its just exercise, than the separate possession of it by either [the President or Senate].

In my opinion, the Framers *assumed* the President would not attempt to break a treaty on his own, since Article II of the Constitution clearly requires that the President "shall take care that the laws be faithfully executed." In other words, the President must uphold the laws because the Constitution tells him to do so.

As we all know, Article IV of the Constitution spells out the fact that a treaty is every bit as much a part of "the supreme Law of the Land" as a statute is. Therefore, the Framers undoubtedly expected future Presidents to carry out treaties in good faith and not to break them at their pleasure.

It is true the President is "the sole organ of the nation in its external relations, and its sole representative with foreign nations." So said John Marshall in 1800 as a member of the House of Representatives. Marshall's quote has been recited by federal courts on many occasions. At most, however, in the context of unmaking treaties this means it is the President who must communicate the message notifying another country that a treaty is void, and, as we shall see, even this much was denied by the 5th Congress which enacted a statute annulling three French treaties without providing for any notice by the President. It does not mean the President alone can make the decision to give that notice. Surely the President's implied power over foreign relations does not give him power to repeal the express provision of the Constitution that requires him to faithfully execute the laws. Nor does it override the system of balance of powers and accountability that the Framers have so carefully imbedded elsewhere in the Constitution. The people would lose the security of deliberation upon the subject of unmaking treaties, no less than they would lose that security in the making of treaties, if no check by Congress or the Senate were put upon the power of termination.

The general rule might be stated as follows: As the President alone cannot repeal a statute, so he alone cannot repeal a treaty. My colleagues in the Senate will find the truth of this expressed in a book that most of us keep on our desks, the *Rules and Manual of the Senate*. Our rules still include a precedent set forth by Thomas Jefferson, who compiled the first manual of rules and practices of the Senate when he was Vice President of the United States.

Jefferson writes: "Treaties being declared equally with the laws of the United States, to be the Supreme Law of the Land, it is understood that an act of the legislature alone can declare them infringed and rescinded."

This also was the belief held by James Madison, who wrote in 1791, less than four years after the Constitutional Convention, of "the same authority, precisely, being exercised in annulling, as in making, a treaty."

Historical practice supports Madison and Jefferson. Far more often than not the Senate, or the whole Congress, has exercised power to approve the termination of treaties. As a matter of fact, Presidents have usually come to Congress for its approval before giving notice of withdrawing from any treaty.

There are exceptions, but none supports a wide open power of the President to annul any treaty he wishes. In particular, the United States has never repudiated a defense treaty with a friendly nation.

Nor has any President terminated a treaty that was not breached by the other party, was not in conflict with or supplanted by a later Act of Congress or another treaty, or that did not become impossible to perform due to circumstances not of our own making.

Terminating treaties: The early practice

It is a little known fact that the first treaties ever to be declared null and void by the United States were cancelled by Congress alone. These were the three French-American Treaties of 1778. Congress, acting through a public law, deemed them to be no longer binding on this country because they had "been repeatedly violated on the part of the French Government."

This step followed attacks by French warships on unarmed American merchant vessels and the infamous X Y Z Affair in which the French sought to extract bribes from American peace negotiators.

The Abrogating Act of July 7, 1798, was approved by President Adams and it is true that to that extent there was presidential consent. However, the statute did not call upon the President to give notice of abrogation and it appears from the legislative debates that Congress assumed no further act was necessary on his part.

In 1887, the U.S. Court of Claims upheld the statute as having terminated both the domestic and the international aspects of the Franco-American treaties. In *Hooper* v. *U.S.* the court said:

"We are of the opinion that the circumstances justified the United States in annulling the treaties of 1778; that the act was a valid one, not only as a municipal statute but as between nations; and that thereafter the compacts were ended."

This early precedent represents the clear admission by President Adams of a legislative role in the abrogation of a treaty, since he signed the law. It also is a concession by the Senate that, in at least some circumstances, the power to void treaties belongs to Congress as a corporate body, and not exclusively to the President and Senate.

The first instance of terminating a treaty by presidential notice did not occur until 1846, 57 years after the government started operations. The agreement rescinded was the convention allowing Great Britain to share joint occupation with America of the Oregon Territory. In response to strong pressure from the House of Representatives, President Polk recommended to Congress that he be given authority by law to give notice of the convention's annulment. The issue was heatedly debated in 1846, with the majority position being that the abrogation of a treaty is clearly a legislative duty that cannot be performed constitutionally by any other power than the joint power of both Houses of Congress. And so a joint resolution was enacted granting the requested power.

The third time we withdrew from a treaty was by the will of the President and Senate acting together as the treaty making power. In the Resolution of March 3, 1855, two thirds of the Senators present advised and

consented to remove our commerce from what we believed were burdensome and oppressive duties under a commercial treaty with Denmark. The resolution authorized President Pierce to give Denmark notice, as required in the treaty for its termination, and it was in response to the expressed wish of the President for such power. President Pierce later publicly acknowledged he had given the notice "in pursuance of the authority conferred" by the Senate resolution.

Curiously, our government used three different methods the first three times it withdrew from or denounced treaties as void. While the measures differed, the significant thing is that each approach required some form of legislative participation in the decision to cancel a treaty.

In practice, an Act of Congress would never again be used without anticipating presidential notice as the means of communicating our intention to annul a treaty to the foreign government concerned and a Senate resolution would be used only once more. As we shall see, the joint resolution, followed by presidential notice to the other country, would become the general vehicle for removing our nation from treaties that we no longer could or wished to enforce. On rate occasions, Congress would also consent to adopt and ratify presidential decisions after they had been proclaimed.

Senate Committee Claims Joint Power

Publicity of the method used in abrogating the treaty with Denmark aroused a storm in Congress. Doubt was even raised in the Senate itself. But the controversy was not over whether the Senate had invaded a presidential prerogative. Rather, the issue was whether the treaty should properly have been annulled by the full Congress.

In response to this debate, the Foreign Relations Committee issued a report on April 7, 1856, strongly claiming for the Senate, acting together with the President, competence to terminate a treaty "without the aid or intervention of legislation" by both Houses of Congress. Pertinent to the Taiwan treaties, the committee asserted that "where the right to terminate a treaty at discretion is reserved in the treaty itself, such discretion resides in the President *and* Senate."

The committee reasoned as follows:

"The whole power to bind the Government by treaty is vested in the President and Senate, two-thirds of the Senators present concurring. The treaty in question was created by the will of the treaty-making power, and it contained a reservation by which that will should be revoked or its exercise cease on a stipulated notice. It is thus the will of the treaty-making power which is the subject of revocation, and it follows that the revocation is incident to the will."

The committee conceded that in certain cases it would be wise to have the concurrence of the House of Representatives in order to make the decision to annul a treaty appear more impressive upon the other government. Thus, the committee took the position:

"Although it be true, as an exercise of Constitutional power, that the advice of the Senate alone is sufficient to enable the President to give the notice, it does not follow that the joint assent of the Senate and House of Representatives involves a denial of the separate power of the Senate."

In May of 1858, the Foreign Relations Committee boldly reaffirmed its position by changing a proposed joint resolution, authorizing the President to give Hanover the notice required for the termination of a treaty, to a mere Senate resolution.

Congress Rebukes Lincoln

The first time a President openly attempted to terminate a treaty without any prior legislative approval was late in 1864, when President Lincoln notified Great Britain of our withdrawal from the Rush-Baggot Convention regulating naval forces upon the Great Lakes. This episode does not serve as a precedent for unilateral presidential action because Congress rushed to defend its prerogative by passing a joint resolution deeming Lincoln's conduct invalid until ratified and confirmed by Congress. Some persons argue that the Rush-Baggot accord was an executive ageement, not a treaty, since it originated in an exchange of notes between Canada and the United States. This would further deprive the incident of any value it may have as a precedent.

Senate debate was dominated by senators who argued that the act of the President was wholly invalid until adopted by Congress. The prevailing view was expressed by Senator Garrett Davis of Kentucky, who said: "It is indispensably incumbent and necessary, in order to secure the termination of this treaty, that it shall be terminated, not by the action of the President, but by the action of Congress."

Senator Charles Sumner of Massachusetts agreed that "the intervention of Congress is necessary to the termination of this treaty. . . ." He explained that the legislation embodied the conclusion that since a treaty is a part of the law of the land, it is "to be repealed or set aside only as other law is repealed or set aside: that is by act of Congress."

Congress did not wait long to reaffirm its position. The joint resolution of January 8, 1865, charged President Lincoln with the duty of communicating notice of termination of the Reciprocity Treaty of 1854 with Great Britain. The same legislative formula was used in June of 1874, when Congress enacted a law authorizing President Grant to give notice of termination of our Treaty of Commerce and Navigation of 1857 with Belgium.

Two years later, the same President sent a curious message to Congress appearing to acknowledge the need for a legislative role in the termination of treaties while asserting power to decline enforcement of a treaty he thought has been abrogated by the other party.

Grant's message of June 10, 1876, regarding the extradition article of the Treaty of 1842 with Great Britain, said:

"It is for the wisdom of Congress to determine whether the article of the treaty relating to extradition is to be any longer regarded obligatory on the Government of the United States or as forming part of the supreme law of the land."

He added, however:

"Should the attitude of the British Government remain unchanged, I shall not, without an expression of the wish of Congress that I should do so, take any action either in making or granting requisitions for the surrender of fugitive criminals under the treaty of 1842."

At most, this is a precedent for presidential authority to consider a breach of a treaty as having suspended it by making enforcement impossible, *subject* to the correction of the President's judgment by Congress.

Hayes Vetoes Law, But Concedes Legislative Role

In 1879, President Hayes recognized the joint power of Congress in terminating treaties, although it was in the process of vetoing an Act of Congress. The legislature had passed a statute seeking to require him to abrogate two articles of the Burlingame Treaty of 1868 with China. His veto rested on the ground that the legislation amended an existing treaty by striking out selected provisions of it.

The power to amend treaties, he said, is "not lodged by the Constitution in Congress, but in the President, by and with the consent of the Senate. . . ."

Hayes also conceded that the "authority of Congress to terminate a treaty with a foreign power by expressing the will of the nation no longer to adhere to it is . . . free from controversy under our Constitution." Thus, he made no claim of power for the Executive to annul a treaty without legislative approval, but rather upheld the traditional joint role of the President and Senate together to make or modify treaties.

In 1883, Congress passed another joint resolution reaffirming a legislative role in the termination of treaties. This law, the Act of February 26, 1883, flatly directed President Arthur to give notice of the termination of several articles of an 1871 treaty with Great Britain.

Presidential Interpretation of Congressional Intent

Occasionally, Presidents have given notice of our nation's withdrawal from a treaty on the basis of their interpretation of congressional intent. This occurs when Congress passes legislation in conflict with a prior treaty, but does not specifically direct our withdrawal from the treaty.

Since the President cannot enforce two equally valid laws which are in conflict, he is compelled to select the one which reflects the current will of Congress. While the President may seem to be using his own power, he actually is fulfilling his duty to faithfully execute the laws by enforcing the latest expression of Congress on the subject.

An interesting example of this principle in practice is found in the events leading up to denunciation of certain parts of the 1850 Commercial Convention with Switzerland. Following enactment of the Tariff Act of July 24, 1897, the United States entered into a reciprocity agreement with France under authority specifically granted to the President by that law. The Swiss government promptly claimed a right under the most-favored nation clause of the convention to enjoy the same concessions for Swiss imports as we had given French products.

We responded that it was our long-continuing policy not to construe the most-favored nation clause as entitling a third government to demand benefits of a special trade agreement purchased by another party with equivalent concessions. In other words, we told the Swiss they could not receive something for nothing. If we made an exception in their case, it would embarrass us in relations with all other trading partners.

Moreover, the 1897 Tariff Act had reaffirmed this historic policy. Section 3 specifically provided that the President is to negotiate commercial agreements "in which reciprocal and equivalent concessions may be secured in favor of the products and manufacturers of the United States." The President lacked authority to conclude agreements in which the other country made no

concessions, and if he had yielded to the Swiss demand it would have been out of line with the clear policy of the law.

Thus, in the face of Switzerland's refusal to renegotiate the contested articles of the agreement, the State Department notified her that the provisions were arrested. Although the State Department would later claim this action served as a precedent for independent presidential power, it would have been inconsistent with the trade policy set by Congress in the 1897 law if Switzerland had been granted privileged treatment without making any compensating concessions. In any event, President McKinley did not act in the total absence of any pertinent supporting statute as proponents of abrogating the defense treaty with Taiwan are urging President Carter to do.

Taft Seeks Ratification

Another action mistakenly asserted in support of Executive treaty-breaking is the effort of President Taft to head off passage by Congress of what he considered an inflammatory resolution calling for abrogation of the Commercial Treaty of 1832 between the United States and Russia. Disputes had arisen with Russia as early as then over the treatment of Americans of the Jewish faith, and on December 13, 1911, the House of Representatives passed a strongly-worded joint resolution demanding termination of the treaty. In order to beat action by the Senate, President Taft informed Russia on December 15 of our intention to terminate the treaty.

On December 18, the President dutifully gave notice of his action to the Senate "as a part of the treaty-making power of this Government, with a view to its ratification and approval." He openly recognized the need for the Senate and the President to act together in order to end an existing treaty and made no claim that his diplomatic notice would have any validity without legislative approval.

Both Houses of Congress passed a joint resolution, which the President signed on December 21, just three days after his message to the Senate. The House vote was 301 to 1, and the Senate vote was unanimous, proving that the President's advance notice to Russia was a concession to recognized congressional power, rather than a sign of independent authority of the President.

Wilson Challenges Congress, But Concedes Joint Role

Congress again asserted its power in the Seamen's Act of March 5, 1915. This law ordered President Wilson to notify several countries of the termination of all articles in treaties and conventions of the United States "in conflict with this act." The notices were duly given and the authority of Congress to impose this obligation on the President was upheld by the Supreme Court in a case discussed below. Twenty-five treaties were affected.

Then, in the Merchant Marine Act of 1920, Congress directed President Wilson to give blanket notice of the termination of all provisions in treaties which imposed any restriction on the right of the United States to vary its duties on imports, depending upon whether the carrier vessels were domestic or foreign. This time President Wilson rebuffed the legislature by announcing that he must distinguish between the power of Congress to enact a substantive law inconsistent with entire treaties and the power to piecemeal call for the violation of parts of treaties. This law was not an effort to terminate treaties, he contended, but to modify them, which Congress could not do.

A memorandum prepared by Secretary of State Hughes for President Harding in October of 1921 also conceded the power of Congress to terminate entire treaties if it so provided in clear and unambiguous language. While Congress had called only for a partial termination in the Merchant Marine Act, the law would have the practical effect of a total termination. If Congress actually intended to abrogate entire treaties, Hughes reasoned, it must say so in plain language.

The positions taken by Presidents Wilson and Harding were a refusal to interpret a law as conveying an intention by Congress to violate numerous treaties outright. There was no presidential denial of the power of Congress to direct the abrogation of treaties when "its intention is unequivocally expressed," and especially absent was any claim for the President of a power to terminate treaties without the shared responsibility of the Congress.

Evidence of President Wilson's recognition of the essential role of Congress in the treaty annullment of process is found in the fact that he first sought the advice and consent of the Senate before attempting to withdraw from the International Sanitary Convention of 1903. Only after two-thirds of the Senate present resolved to "advise and consent to the denunciation of the said Convention" on May 26, 1921, by which time Harding had become President, did the United States give notice of its intention to withdraw.

CHAPTER 3

Terminating treaties: Modern practice

This brings us up to more recent practice, some of which at first impression may appear to break with the almost universal prior practice of terminating treaties, and giving notice of intent to terminate, only following legislative approval or ratification. Starting in 1927, there are nine instances in which Presidents have given notice of the termination of treaties without receiving accompanying congressional authority or seeking ratification.

Upon close examination, however, the recent record does not support an untrammeled power of the President to annul any treaty he wishes. In two instances the notice of termination was withdrawn and the United States did not denounce the treaties. Two other treaties were abrogated because they were inconsistent with more recent legislation of Congress and one was plainly superseded by our obligations under a later treaty. The remaining four appear to have been annulled or suspended after it became impossible to effectively carry them out. In addition, there are five recent instances where notice has been given pursuant to Acts of Congress.

The following treaties are involved: In 1927, President Coolidge gave notice that the 1925 Convention for Prevention of Smuggling with Mexico was terminated. At the time, United States relations with Mexico were the subject of emotional debate in Congress regarding alleged religious persecution and the confiscation of American-owned private and oil lands in Mexico. In the disruptive situation of the period, it appears to have been impossible to implement the Convention.

In 1933, President Franklin Roosevelt gave notice of termination of an extradition treaty with Greece. But the notice was withdrawn and the treaty was not abrogated. The incident was triggered because Greece had refused to extradite an individual accused of fraud. Thus, the President's proposed action was based on the fact the treaty had already been voided by breach of the other party.

Also in 1933, President Roosevelt terminated the 1927 Tariff Convention as having a restrictive effect on the National Industrial Recovery Act of 1933. Then, in 1936, he terminated the 1871 Treaty of Commerce with Italy because its provisions would limit the President's ability to carry out the Trade Agreements Act of June 1934. In both these cases the treaties were inconsistent with prevailing legislation.

In 1939, President Roosevelt notified Japan of our nation's intent to terminate the Commercial Treaty of 1911. Although the Department of State argued broadly that "the power to denounce a treaty inheres in the President of the United States in his capacity as Chief Executive of a sovereign state," President Roosevelt's authority clearly stemmed out of acts of war by Japan toward allied nations. In fact, it was persuasively argued in the Senate that the President was *compelled* to denounce the 1911 Treaty with Japan because of our obligations under a later treaty, the Nine Power Agreement, committing the United States to respect the territorial integrity of China. After the invasion of China by Japan, we would have aided in the violation of that obligation by adhering to the Japanese treaty.

On October 3, 1939, the State Department gave notice of out intention to suspend operation of the London Naval Treaty of 1936. Our stated reason was the changed circumstances resulting from the earlier suspension by several other parties to the treaty. In view of the state of war then existing in Europe it was impossible to carry out a treaty that was supposed to limit naval armaments and promote the exchange of information concerning naval construction.

The next precedent occurred in August of 1941, when the International Load Line Convention governing ocean shipping was suspended by President Roosevelt. He relied on the opinion of Acting Attorney General Biddle that, as in the case of the Naval Treaty, fundamental changes in the circumstances created an impossibility of performance. Accordingly, Roosevelt suspended the convention for the duration of the war emergency because of aggression then being waged by Germany, Italy, Japan and the Soviet Union.

It is interesting that the opinion of the Acting Attorney General declared: "It is not proposed that the United States denounce the convention. . ., nor that it be otherwise abrogated. Consequently, action by the Senate or by the Congress is not required."

From this, it is obvious the incident cannot be considered as support for independent presidential action. To the contrary, it appears to be an admission by the Acting Attorney General that some legislative approval is normally required for the abrogation of a treaty.

A recent, but not the latest, assertion of the abrogation power by Congress occurred in 1951. In that year, Congress enacted the Trade Agreements Extension Act instructing President Truman to terminate trade concessions to Communist countries. Most of them were granted by executive agreements, but two, those with Poland and Hungary, involved formal treaties. The required notices were promptly given by President Truman.

A fundamental change in circumstances resulting in an actual impossibility of performance was again invoked by the United States in announcing our withdrawal in 1955 from the 1923 Convention on Uniform-

ity of Nomenclature for the Classification of Merchandise. The U.S. notice specifically observed that the convention had been "rendered inapplicable" since a fundamental component, the Brussels nomenclature of 1913, had itself "become outdated."

An aborted incident occurred in November of 1965, when the United States announced its planned withdrawal from the Warsaw Convention, relating to recovery of damages by international air passengers who suffer death or personal injury. One day before the effective date of the withdrawal, the United States withdrew its notice. At least two legal commentators reacted with publication of articles condemning the power grab by President Johnson as unconstitutional.

Next, we furnished notice of terminating the 1902 commercial convention with Cuba. This step was an integral part of the U.S. economic embargo of Castro's Cuba, declared on February 2, 1962, in which we were joined by the Organization of American States. The notice, given August 21, 1962, preceded President Kennedy's naval blockade of Cuba by only eight weeks.

The President acted under provisions of the Foreign Assistance Act of 1961 and the Export Control Act of 1948. Also, he had ample authority to impose a trade embargo under the Trading with the Enemy Act and Mutual Assistance Act of 1954, known as the Battle Act. Notice of terminating the commercial convention was a mere formality mandated by a national policy authorized and sanctioned by Congress.

Termination of the convention also was in accordance with the Punta del Este Agreement of January 1962 by which the Ministers of Foreign Affairs of most American nations resolved, by application of the Inter-American Treaty of Reciprocal Assistance of 1947, to embargo trade with Cuba in arms and implements of war of every kind and to study extending the embargo to other items. Article 8 of the 1947 treaty specifically contemplated such a "partial or complete interruption of economic relations."

Finally, Congress may be said to have ratified the decision in September of 1962, if any ratification were needed, by enacting the joint resolution known as the Cuban Resolution. This legislation recognized broad authority in the President to take whatever means may be necessary to prevent Cuba from "exporting its aggressive purposes" in the hemisphere and to prevent establishment of a Soviet military base. Thus, the termination was at one and the same time ratified and authorized by legislation and in accordance with a treaty later in time.

The most recent incidents of treaty termination followed enactment of the Fishery Conservation and Management Act of 1976. This law establishes a 200 mile-limit fishery conservation zone within which we shall exercise exclusive management authority over nearly all fish and extends our exclusive authority even beyond the zone.

Section 202(b) of the law directs the Secretary of State to initiate the renegotiation of any treaty which pertains to fishing within these management areas and is "in any manner inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions." The section also declares "the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after such date of enactment."

Pursuant to this express statement of national policy by Congress, the Department of State has given notice of our withdrawal from the 1949 International Convention for the Northwest Atlantic Fisheries and the 1952 International Convention for the High Seas Fisheries of the Narth Pacific Ocean. Notice regarding the former convention was given on June 22, 1976, and notice regarding the latter agreement was made on February 10, 1977. These two annulments, the latest on record, may fairly be classified as having occurred pursuant to specific congressional authorization and direction.

A number of other treaties have been terminated by ratification of new treaties on the same subject. This form of treaty abrogation does not have bearing on purported Executive independence, except that it obviously follows affirmative action by the Senate.

None of this type of treaties, usually covering technical subjects, has been included in the above listing and they are mentioned here only to prevent confusion arising from a failure to identify them. In these cases, the Senate in effect advises and consents to the termination of one treaty and its substitution by another in the very act of agreeing to ratification of the new treaty, it being a well settled diplomatic practice that a later treaty supersedes or revises an earlier one on the same subject.

Historical Usage Demands Legislative Participation in Abrogation of Treaties

The historical usage described above upholds the general position asserted by the late Professor Edward Corwin, one of this century's foremost authorities on the Constitution, who wrote:

"(A)ll in all, it appears that legislative precedent, which moreover is generally supported by the attitude of the Executive, sanctions the proposition that the power of terminating the international compacts to which the United States is party belongs, as a prerogative of sovereignty, to Congress alone."

The only clarification I would add to Professor Corwin's statement is that the abrogation of a treaty also can be made by the exercise of the treaty-making power itself, meaning the President together with two-thirds of the Senate, or possibly if Congress goes along, by prompt congressional ratification of a Presidential initiative.

Also, it may be conceded for purposes of the situation at hand, our treaty relations with the Republic of China, that history indicates the President may, if Congress raised no objection, determine whether or not a treaty (1) has been superseded by a later law or treaty inconsistent with or clearly intended to revise an earlier one, (2) has already been abrogated because of its violation by the other party, or (3) cannot be carried out because conditions essential to its continued effectiveness no longer exist and the change is not the result of our own action.

Exceptions Are Not Applicable to ROC

It is important to note that none of the exceptions recorded above applies to the Republic of China. She has faithfully adhered to all our treaties with her and has not given us any cause to consider them void.

Nor could impossibility of performance be raised as an excuse, because we would be the party at fault. As proposed by the sympathizers of Communist China, our break in treaty relations with Taiwan would follow recognition of the mainland regime. The basis for our annulment of the treaty would be our own voluntary action in breaking diplomatic ties with Taiwan.

It is clear international law forbids a nation from raising a change in circumstances as the ground for terminating a treaty where that change results from an action of the party invoking it. This is spelled out in the 1969 Vienna Convention on the Law of Treaties, which the United States has signed, but not yet ratified.

Article 61 of that Convention reads:

"Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty."

Article 62 of the same Convention also provides that a "fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty . . . if the fundamental change is the result of a breach by the party invoking it. . . ."

Thus, it would not only be a dishonor to the United States and a violation of the Constitution if the President should unilaterally break our treaties with Taiwan, but it would be a violation of international law as well.

In the words of the Department of State itself at an earlier time in our history: "Such a course would be wholly irreconcilable with the historical respect which the United States has shown for its international engagements, and would falsify every profession of all belief in the binding force and the reciprocal obligation of treaties in general."

CHAPTER 4

Terminating treaties: The nature of U.S.-Republic of China Relations

This leaves the question of whether a treaty can be entered into with a government that we do not recognize. If, for the sake of argument, the United States should break relations with Taiwan, can we still have treaties with her?

Yes. We can. Although we have never before withdrawn recognition from any friendly country, we have had dealings in the past with powers whom we have not recognize so long as they have exercised practical control over a particular area. Mainland China is a case in point.

The past international experience of our own and other governments bears out the validity of this practice. For example, the Netherlands at one and the same time recognized the official government of Spain while entering into formal treaty relations with the government of the Franco regime in 1938. And, in the 1950's, Egypt concluded several treaties with East Germany and Communist China without recognizing those countries.

As to the United States, we not only currently have a liaison office in Communist China, but we dealt with the Communist regime once to negotiate the armistice in Korea and again during the 1954 Geneva Conference on the reunification of Korea. Also, in 1962, the United States concluded an international agreement on Laos to which Communist China was an official party.

Other precedents involving the United States include the Postal Conventions of 1924 and 1929 to which both we and the Soviet Union became parties, even though the United States did not then recognize the

USSR. Then there is a well-known political treaty, the Kellogg-Briand Pact of 1929 for the renunciation of war. The United States, which did not recognize the Soviet Union, nevertheless agreed to invite her to become a party. We even went so far as to send Russia a diplomatic note reminding her of Russian obligations under the Pact, again prior to having diplomatic relations with her.

Another example is the Nuclear Weapons Test Ban Treaty of 1963, which appoints three depositories for new members in order to enable both Communist China and Taiwan, and East Germany, to become parties along with nations that do not recognize them. The United States, which does not recognize Communist China, extended an invitation to it to come into the agreement.

The question of having dealings with a non-recognized power was examined in the context of our China policy by Stanford University law professor Victor Li in a 1977 study sponsored by the Carnegie Endowment for International Peace. Professor Li concluded that there are no legal impediments to considering Communist China as the *de jure* government of China, while the Taiwan authorities are regarded as being in *de facto* administrative control of the territory and population of Taiwan.

If the Taiwan authorities were regarded as having practical power over a territorial entity, whether or not it is called a state, Professor Li writes that international law contemplates the possibility "that treaties applying to territory actually controlled by Taiwan would remain in force even after withdrawal of *de jure* recognition."

Professor Li concludes his paper by specifically declaring:

"International law does not *require* that treaties affecting only the territories controlled by the Taiwan authorities must lapse. On the contrary, there is strong support for protecting on-going relations, especially those involving commercial affairs and private rights."

In his authoritative book, *Nonrecognition and Treaty Relations,* Dr. Bernard R. Bot agrees that derecognition of a government does not automatically suspend or terminate treaties previously entered into by that government. To the contrary, he argues:

"A nonrecognized state can be a party to international agreements, provided that its *de facto* authorities carry on, even if only as agents, the external relations and can avail themselves of the resources of the territory and control the population if necessary, for the purpose of observing treaty obligations assumed."

Moreover, Dr. Bot finds "That nonrecognition of states and governments does not necessarily impede the latter's capacity to conclude bilateral treaties." He adds, "it becomes increasingly clear that the criterion for participation in multilateral treaties is no longer the recognition status, but the issue of political desirability."

Thus no impediments exist in international law which would prevent the United States from dealing both with the People's Republic of China as the legally recognized government of China and with the Republic of China on Taiwan as the separate authorities in control of a portion of the Chinese state.

The Recognition Power Differs From Treaty Abrogation

Another matter to be resolved is whether the recognition power itself gives the President the power to terminate treaties. The one power does not follow from the other, although Alexander Hamilton once argued that in special circumstances they do.

In the course of his famous debates with James Madison over the constitutionality of President Washington's Proclamation of Neutrality among warring France and Britain in 1793, Hamilton, writing as Pacificus, claimed:

"The right of the executive to receive ambassadors and other public ministers . . . includes that of judging, in the case of a revolution of government in a foreign country, whether the new rulers are competent organs of the national will, and ought to be recognized, or not; which, where a treaty antecedently exists between the United States and such nation, involves the power of continuing or suspending its operation. For until the new government is *acknowledged,* the treaties between the nations, so far at least as regards *public* rights, are of course suspended."

Hamilton was writing of a situation where only one government, that of the rebels, survived a revolution. He was not considering the situation where there are two competing powers demanding recognition, one representing the former legitimate authorities and the other the insurrectionists. In particular, Hamilton made no reference to a setting in which the United States had continued recognition of the original authorities following a revolution and had even entered into a treaty with that same govenment after the revolution, as is true in the case of the ROC.

Far from this being an instance where all treaties between the nations were suspended, as in Hamilton's supposition, here the Mutual Defense Treaty was concluded years after the revolution. For us to renounce that treaty by switching recognition after a quarter of a century's adherence to it would be a new development of our own making, not an immediate and unavoidable result of a revolution. Thus, Hamilton's argument is inapplicable to present Sino-American relations.

It would be sheer legal gimmickry for anyone to argue that the recognition power carries with it the power to abrogate our treaties with the ROC. It might as well be claimed that recognition includes the power to make formal treaties independently of the Senate.

As discussed above, should the United States now decide to drop relations with the ROC, the question of whether treaties and other international agreements with her would continue in effect would be left up to mutual agreement between the United States and the still *de facto* government of Taiwan.

Thus, it is clear that should we switch embassies from Taipei to Peking, no rule or tradition of domestic or international law would require the President to consider treaties with the authorities on Taiwan as having lapsed. Rather this would become a political decision to be determined by political reasons, not by legal theory or grounds. And since, as we have seen, the Constitution demands a legislative role in such a political decision, a presidential act of derecognition could not annul those treaties absent the separate, concurring decision of Congress or the Senate.

The Removal Power Cannot Be Equated With The Treaty Termination Power

At a recent Washington, D.C. seminar on China, the main speaker, one of the leading proponents of immediate recognition of the mainland China regime, attempted to justify his opinion that the President may terminate a treaty without the consent of the Senate or Congress by drawing a curious analogue to the removal power. Since it is well settled that the President can remove cabinet members and other high officials of the Executive Branch, who have been appointed "by and with the advice and consent of the Senate," without returning to the Senate for its further consent, so it is claimed the President can remove treaties which have been made "by and with the advice and consent of the Senate."

This line of argument is totally unsatisfactory for the following reasons. First, it is nonsense to equate the President's relationship to subordinate officials of his own Administration with the relationship of this country to other sovereign nations. Allowing the President to dismiss officers whom the Constitution has plainly put under him is one thing. But allowing the President to discard a formal treaty entered into between our government and our legal peer under international law, another sovereignty, is quite a different matter. There is simply no factual ground on which to make a parallel between the two powers.

Second, unlike the case of the removal power, there is a specific constitutional provision which conflicts with any inference of the power to terminate treaties. As we have seen, the President is directed by the Constitution to faithfully execute the laws. Another provision of the Constitution tells us that a treaty is a law. Thus, the President would run afoul of express provisions of the Constitution if he should attempt to unilaterally terminate a treaty. The novel doctrine that a power to annul a treaty can be implied where it runs squarely into express provisions of the Constitution on the basis that a power to remove officers has been implied where there are no conflicting express provisions of the Constitution cannot be sustained.

Third, the need for application of the checks and balances feature of the Constitution is still acute in the case of the proposed termination of treaties, but is not felt in the case of removing Executive officers. The presidential power of removing officials who are placed under his direction is not surprising. The power aids in the smooth performance of his conduct of the government without the potential sabotage or disruption of his program caused by inferior officers who disagree with his policy or are discovered to be incompetent.

In contrast, his decision to annul a treaty or allow a treaty to lapse is a decision of the highest national importance. Instead of aiding in carrying out the laws, it does just the opposite. It has the effect of breaking or negating a law. Such a decision is surely the kind of public action which the Framers did not want taken until it had received great deliberation. The termination of a formal compact with another sovereign nation is exactly the type of situation where the checks and balances doctrine has its fullest force and effect. The added deliberation called for, if the decision must be sent to the Senate for its advice and consent before its completion, offers security to the people that an action of major consequences will not be taken lightly or without an opportunity for adequate consideration. Thus, the removal power is not comparable to the treaty termination power.

Lack of Judicial Precedents

To this point I have emphasized the clear logic of the Constitution itself and the les-

sons to be drawn from historical usage. Judicial precedents have not been cited because there simply are no court holdings squarely deciding a conflict between the President and the Senate or Congress over the treaty abrogation power.

What few related cases exist can be discussed briefly. First, there is a 1913 Supreme Court decision, *Charlton v. Kelly*, which some commentators argue supports a discretion for the President to interpret whether a treaty is void in circumstances where the other party violates it. But the case has no application to the situation where the President, without legislative approval, seeks to declare a treaty void when no breach has occurred. Moreover, *Charlton* involved an extradition treaty with Italy which neither the Executive nor Congress wanted to void. Since the treaty was not denounced, the case is not even a decisive ruling for the single situation where a breach occurs.

A second case is *Van der Weyde v. Ocean Transport Company* in 1936. Here, the Supreme Court decided that since Congress had directed the President by the Seamen's Act of 1915 to give notice of the termination of treaty provisions in conflict with that Act, "it was incumbent" upon him to determine the inconsistency between the law and a treaty with Norway.

The Court expressly avoided any question "as to the authority of the Executive in the absence of congressional action, or of action by the treaty-making power, to denounce a treaty. . . . But it did appear to recognize the power of Congress to require the President to interpret whether a treaty is inconsistent with a statute.

A third case involving treaty abrogation is *Clark v. Allen*, where the Supreme Court examined the question of whether the outbreak of war necessarily suspends or abrogates treaties. On its face, this 1947 case involved a construction of national policy expressed in an Act of Congress, the Trading with the Enemy Act.

Although it is *dicta*, the pertinent part of the opinion for our analysis comes from the favorable use by the Court of a statement made by then New York State Court Judge Cardozo: "[The] President and Senate may denounce the treaty, and thus terminate its life. Congress may enact an inconsistent rule, which will control the action of the courts."

By favorably quoting this interpretation of the treaty abrogation power, the Supreme Court seems to have approved the proposition that either the Senate or Congress must participate in the annulment of a treaty.

Two other voices from the bench add weight to the power of Congress in this field. In an opinion he published with the case of *Ware v. Hylton* in 1796, Supreme Court Justice Iredell twice emphasized his belief that Congress alone has "authority under our Government" of declaring a treaty vacated by reason of the breach by the other party. Although his statements were *dicta* to the Court's decision, they are significant as an 18th Century understanding of the annulment power by one of the original members of the first Supreme Court.

In his *Commentaries on the Constitution*, Justice Story declared that the treaty power "will be found to partake more of the legislative, than of the executive character." He also explained it is essential treaties "should have the obligation and force of a law, that they may be executed by the judicial power and be obeyed like other laws. This will not prevent them from being cancelled or abrogated by the nation upon grave and suitable occasions; for it will not be disputed that *they are subject to the legislative power, and may be repealed, like other laws, at its pleasure.*" (Emphasis added.)

From what few judicial pronouncements exist, there is no basis for Executive power over treaty abrogation and some, but not definitive, authority for congressional power. Although the issue is ultimately a legal one, the answer lies in history and the Constitution, not in earlier cases.

Breach of ROC Treaties Would Affect Private Rights

Not only the Mutual Defense Treaty is involved in the scheme to allow our treaties with the ROC to lapse. The 1977 Department of State publication *Treaties in Force* lists at least 59 treaties and other agreements now in effect between the two nations. If the United States were to adopt the approach put forward on behalf of the Communist Chinese, every one of these agreements would fail, not just the formal treaties.

It should be observed that this group of international agreements concerns such important subjects as shoe and textile quotas, aviation landing rights, tariffs on imports and exports, guarantees of American investments of private capital in Taiwan, safeguard of nuclear materials, and protection of rights of American citizens located in Taiwan.

It is irresponsible to propose that all these agreements shall be simultaneously extinguished upon recognition of Communist China, yet this is the logical extension of the policy being urged upon President Carter. As indicated, many of these agreements establish rights for private individuals and businesses. Considering them as having lapsed would create serious political and economic consequences and open a flood of litigation by private parties whose interests are adversely affected by such a government policy.

Impact Upon Other Treaties

Another potential implication of presidential discretion to void treaties which has not been considered, publicly at least, by proponents of the concept, is its effect upon the basic meaning of the rule of law to a free people.

If a President can violate any treaty he wants, what becomes of the order and stability in which law is supposed to operate?

If a President, independently of Congress, can withdraw from the Universal Copyright Convention, for example, what happens to private rights that were protected by this Convention?

If a President chooses to violate the Outer Space Treaty, which prohibits our nation from placing in orbit around the earth any objects carrying nuclear weapons, what effect would this have upon world stability?

The fact that the defense treaty with Taiwan includes a provision regarding duration in no way adds to presidential power. A moment's reflection will confirm that judgment. Remember, the defense treaty with Taiwan does not stand alone. Nearly every treaty this nation has with other countries contains a provision similar to the one in our treaty with Taiwan.

It is true that section X of the 1954 treaty states: "Either Party may terminate it one year after notice has been given to the other Party."

It is also true that this provision is repeated in similar terms in nearly all our bilateral or multilateral treaties. For example, NATO, the Test Ban Treaty, the Statute of the International Atomic Energy Agency, the Nuclear Nonproliferation Treaty, the Biological Weapons Convention, the Universal Copyright Convention, and the Outer Space Treaty all contain provisions expressly laying down agreed ways the parties can terminate them with one year's or less notice having been given to the other parties. If the Taiwan defense treaty were interpreted as allowing the President alone to provide such notice, each of the above treaties would be hostage to the sole discretion of the Executive. This news would undoubtedly come as a surprise to the Senate which has advised and consented to each of these documents without being informed of any such design.

Without fear of contradition, I can predict an uproar among my colleagues, for example, should any President assert power to unilaterally, without giving an opportunity for prior deliberation in the Senate or Congress, violate the Nonproliferation Treaty by transferring nuclear warheads to South Africa.

The truth is that were the shoe reversed, many Americans who are falling all over themselves to give in to every demand by Communist China, would be the first to condemn unilateral presidential action of a kind they do not like. They have not thought through the possible implications of the legal theory they are asking President Carter to adopt, and if they would, the fallacy in their proposal would be obvious.

Moreover, an examination of each of the formal treaties described above which have been denounced or terminated by the United States in the past reveals that nearly all included provisions allowing withdrawal upon notice. The fact that Presidents have generally interpreted provisions regarding duration as still requiring them to seek congressional or at least senatorial approval before giving notice to the other party proves that inclusion of such a provision in a treaty does not change the domestic constitutional arrangement of powers between the Executive and Congress.

As shown above, Congress has heretofore collaborated in the termination of over 40 treaties by enacting a joint resolution, agreeing to a Senate resolution or by Act of Congress. Congress obviously believed it retained a role in the treaty abrogation process in each of these instances, all but three of which involved the annulment of treaties having duration provisions. There is no record to the contrary showing that the existence of such provisions in treaties has any relation to the powers of the President and Congress.

It may belabor the subject to point out the obvious, but treaties never say they can be terminated after notice given by "the President" or "head of state" of any government. Rather, the customary phrase specifies that when notice is made it shall be given by one of the "parties" to the treaty.

The term "party" means the government of the state or international personality involved, which compels a reference to the constitutional processes of that government in order to determine the manner in which the decision to give notice shall be made. In our case, this brings us back to the fact that under the Constitution the power is a joint one shared by the President and Senate or Congress.

CONCLUSION

In conclusion, no President acting alone can abrogate, or give notice of the intention to abrogate, our existing treaties with the government on Taiwan. Of course, neither the Senate, nor Congress, will agree to dropping those treaties.

It is the clear instruction of history that the President cannot give valid notice of an intention to withdraw from a treaty, let alone void a treaty in violation of the formalities required by any provision it may contain regarding duration, without the approval or ratification of two-thirds of the Senate or a majority of both Houses of Congress. Any President who would seek to thwart this constitutional mandate runs the risk of impeachment.

This is not a threat. It is a simple statement of fact which those who are unwisely urging this course of action upon the President should understand. They apparently do not know the consequence of what they are asking the President to do.

For it must be clearly understood that the check of impeachment is one of the safeguards provided by the Founding Fathers against political offenses, such as an irresponsible abuse by a President of a constitutional discretion. In fact, a study made by the Library of Congress in 1974 on the abrogation of treaties concluded by observing that where a conflict arises between the President and the Senate or Congress over the question of abrogation of a treaty, and the President acts contrary to the wishes of the Senate or Congress, the President "might be impeached."

This answers the too clever reasoning of the legal adviser of the Department of State which surfaced in a 1936 memorandum to President Roosevelt. His argument contended that the failure of the Congress or the Senate to approve the action of the President in giving notice of intention to terminate a treaty would be of no avail because once the notice is given, the foreign government concerned may decline to accept a withdrawal of such a notice. What the argument failed to note is that even if the foreign government is entitled and wants to rely on such a notice without inquiring into the constitutional authority of the President, this does not change the domestic constitutional situation of the President in relation to the Senate or Congress. The President is still answerable to the Constitution and accountable to the Congress and people.

Mr. GOLDWATER. I hope this practice of double-dealing, double-talking, dealing off the bottom of the deck, the middle of the deck, pulling out of the sleeve, as far as Taiwan goes, will end and we can begin to give the kind of respect and recognition to her that this great country deserves. The Republic of China on Taiwan means so much to our freedom and to our protection in the Pacific that words cannot describe it. I live in constant hope, but if I depend upon the past being any teacher of the future, that hope may be in vain. But who knows, who knows what may come, given the ability, and character, and energy of the free Chinese people.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Assistant Secretary of the Senate proceeded to call the roll.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

A TRIBUTE TO FRANCES ELMER BUSBY

Mr. HEFLIN. Mr. President, today I rise in recognition of a great Alabamian who has had a long and distinguished career in the fields of radio and television broadcasting and real estate development, and who will celebrate his 70th birthday next month.

On February 2, 1913, in Waynesboro, Miss., a baby boy was born to Mr. and Mrs. Orlando S. Busby. He was named Frances Elmer Busby, but, at his request, at the age of 3, this name was shortened to "Buz." It has remained so throughout his life.

In 1916, he moved with his family to Mobile, Ala., where his father became rail superintendent for the Mobile Light & Railway Co. That company was then the operator of the city's streetcar system.

After graduating from Murphy High School, "Buz" worked his way through college, working part time as a service station attendant as well as operating a used model A Ford as a taxi for his fellow students. He graduated from Springhill College with a bachelor's degree in business administration.

"Buz" first worked for a Mobile automotive and appliance firm, and then as promotion manager for the Southern Baseball League, before taking his first radio job—as general manager of radio station WMOB. In 1948, he joined radio station WKRG as general manager, and there he worked for Kenneth Giddens, who later was to become president of the Voice of America Network in the Nixon administration.

Mobile businessman John Waller, an early associate of Busby's, recalls that one of Buz's more "successful" business ventures was the raising of cocker spaniel dogs for sale. Waller reports that this business went quickly to the dogs.

In 1954, Busby moved to Dothan, Ala., where he helped build and start the city's first television station, WTVY-TV, a CBS affiliate. He served as president and general manager of the station. Later, he served as chairman of the board of WCWB-TV, an NBC affiliate in Macon, Ga., until 1978.

Busby now owns Delta Construction Co., in his hometown of Dothan. Additionally, he serves as chairman of the board of Busby, Finch, Widman & Latham, an Atlanta, Ga., broadcast advertising firm; is a member of the board of directors of General Telephone Co. of the Southeast; serves on the board of directors of the First National Bank of Dothan; and for 7 years, he served on the original Columbia Broadcasting System Affiliate Board.

Buz is married to the former Elizabeth Sexton of Royston, Ga., and they have one daughter, Mrs. Robert Bryan, Jr., of Atlanta, Ga., and two granddaughters, Mary Hart and Bess.

Mr. Busby's numerous accomplishments, together with his many years of work in public service and the high esteem in which he is held by all who know him, serve as testimony that he is indeed a dedicated and talented individual.

Mr. President, I can point out, from my own personal experiences, that my friend, Buz, is a perfect host and is not bragging when he says, "My friends do not go away hungry, thirsty, or mad."

Buz has certainly come a long way from the days when a statement in his high school yearbook, during the depression years, said that his ambition was to "ride to the poorhouse in a Cadillac automobile on a full stomach."

Mr. President, I conclude my remarks in recognition of Buz, with congratulations to Mr. Busby on his 70th birthday and his outstanding business and civic career, spanning more than five decades, and am sure that the year 1983 will be known as "The Year of the Buz."

Thank you, Mr. President.

RECESS UNTIL 2 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until 2 p.m.

Thereupon, at 11:59 a.m., the Senate recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. LUGAR).

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business. Each Senator is limited to 5 minutes to speak, up to 4 p.m.

Mr. QUAYLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, is the Senate in morning business?

The PRESIDING OFFICER. The Senate is in morning business.

Mr. BYRD. I thank the Chair.

Mr. President, the majority leader made provisions for me to speak without the confines of the 5-minute limitation. I do so at this time because there is nothing before the Senate, no business to be transacted until 4 p.m. If any Senator walks into the Chamber and wishes to have the floor to speak, I will gladly defer to that Senator and continue my speech later.

I ask unanimous consent that if such occurs, my speech will not show an interruption in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE UNITED STATES SENATE

THE SENATE, EXPANSIONISM, AND THE MEXICAN WAR (1840-1848)

Mr. BYRD. Mr. President, the story of the United States during the 19th century was one of movement and growth. We were an ever-expanding people, drawing immigrants from the restless, the discontent, the needy, and the visionaries of other nations. We were also pushing our frontiers ever westward to the Pacific Ocean. Today, in my continuing series of addresses on the history of the U.S. Senate, I am going to speak about the remarkable decade of the 1840's, when the Nation added three new States, Florida, Iowa, and Wisconsin, and vast new territories in the Northwest, and Southwest. Such growth was not without its costs.

Mr. LONG. Mr. President, will the Senator yield?

Mr. BYRD. I yield.

Mr. LONG. Mr. President, I commend the minority leader for the speeches he has made on this subject, and I hope that he will continue to pursue this matter because at some place in the RECORD there should be an authoritative, reliable statement to which all Senators could turn that covers what the Senate had done, the reasons that it did it, and a reliable account, impartial, and fairly stated so that all Senators from time to time could review the history of the Senate and improve their conduct by reference to what has happened, what should have happened, and what should not have happened here in the Senate, and the Senator has made a fantastic record along that line.

I hope he will find the time during the remainder of his service in the Senate, and I hope the Good Lord lets him serve out at least every day of his term and some after that, to complete this very interesting series of statements he has made here on the Senate floor, enlightening us on the background of the Senate and its traditions.

Mr. BYRD. I thank the distinguished Senator from Louisiana who has been a Member of this body—I suppose as far as seniority is concerned among the present membership—he is probably the No. 2 man in seniority. I appreciate those very flattering words, and that is one interruption I hope will show in the RECORD.

Mr. LONG. All right.

Mr. CHILES. Mr. President, will the Senator yield further?

Mr. BYRD. I yield.

Mr. CHILES. I wish to say to the distinguished minority leader that I have read with great interest many of the reports that he has made to the Senate on the history of the Senate, and I concur with the distinguished Senator from Louisiana.

I hope that when this chronicle is finished there will be some way of having it bound and that we could have the benefit of that in book form. I hope he will certainly consider doing that because I think it will be a valuable work of history.

While I have enjoyed very much all of the talks he has made, I think today is probably going to be one of the most important speeches he possibly could make. He is speaking about 1840, the year that Florida joined the Union. I think he hits a highlight today.

Mr. BYRD. I thank my friend from Florida. Again I am delighted that he has made these comments.

They, I think, help to advance the real purposes of this effort which I have made and which began 2 years ago next month, and rather accidentally, because at that time one of my two granddaughters was in the gallery, and it happened to be on one of those Fridays when I, as the then-majority leader, said there would be no votes on Fridays, and the Senate was just here for morning business and the introduction of bills, resolutions, and so on, and my younger granddaughter sat in the galleries with a class of schoolmates, and I thought it might be well if they had something to go back to school and talk about. So I spent an hour, without preparation, talking about the Senate and its history.

The next Friday my older granddaughter brought her class, and it so happened that both granddaughters came here with their father, and I though it would not be well for him to hear the same speech twice, and knowing that I should be as considerate of the second granddaughter as I had tried to be to the first, I spoke again for an hour or so on the history of the Senate.

After that there were several officers and Members of the Senate who expressed interest in the speeches, and they expressed the hope that I would continue with some lectures, especially in view of the fact that the Senate will be 200 years old in 1989 which is not very far away.

So I thank Mr. LONG and Mr. CHILES for their charitable and very gracious remarks.

I know that the speeches may sound boring to some people from time to time, but it will be my intention to seek some way of having all of these statements bound and available. I have had a great deal of interest expressed from throughout the country by college professors, lawyers, and judges, and so if it is a service, and I think it will be, perhaps there will be times when we can think about how to go about doing that.

This is the 52d speech I have made since, as I remember, March 21, 1980, when I extemporaneously made that first address on the subject—the U.S. Senate.

It took long years of negotiations with Great Britain to settle peacefully our boundary disputes with Canada, from Maine to the Oregon territory. Our differences with Mexico could only be settled by a bloody war. The expansion movement, known by the slogan of "Manifest Destiny," presented the political leaders of that era with a disturbing paradox, for at the same time it increased the size of the nation, it also stimulated sectional divisions. This was a decade of political warfare, between the Whigs and the Democrats, between the president and the Congress, and finally between the North and the South. The participants in this warfare included those three great senators of the past, Henry Clay, John C. Calhoun, and Daniel Webster; and the battleground was the floor of the United States Senate.

In my last address I spoke of the election of 1840, still famous as the "Tippecanoe and Tyler Too" campaign. We remember the election as the first of the "modern" elections, with its conventions, parades, songs, and slogans, rather than for any particular issues. One reason is that the Whig party did not offer a platform, in the hope of drawing the widest possible vote by appealing to all those opposed to the incumbent Van Buren administration, and alienating no one by endorsing any specific program. The irony here is that the Whig party did have a specific program, Henry Clay's "American System," perhaps as well conceived a program as any political party has ever offered to the public. But by not running honestly upon this program, the Whig party undermined itself. As we shall see, its choice of Senator John Tyler, a States' Rights Whig from Virginia, as its vice presidential candidate—to carry Virginia's important electoral vote—would eventually doom passage of Clay's program.

Although Senator Henry Clay had been passed over for the Whig nomination in 1840, he had every reason to believe that the new president, William Henry Harrison, would support his legislative program. Democrats, by comparison, were sure that fireworks

would soon erupt between the equally strong-willed Harrison and Clay. "Now our fun commences," wrote Democratic Senator William L. Marcy, shortly after the election.[1]

President-elect Harrison arrived in Washington in February 1841, 142 years ago. The newspaper correspondent Ben Perley Poore described him as "a tall, thin, careworn old gentleman, with a martial bearing." [2] (Until 1980, Mr. Harrison had the distinction of being the oldest person ever elected president.) Anticipating some friction with the popular Whig senator, Harrison offered Henry Clay the position of Secretary of State in his cabinet. But Clay's interest was in passing his legislative program, and he declined the offer, recommending instead Senator Daniel Webster. Clay also urged that the president call a special session of Congress, so that the Whigs could move ahead quickly to enact their program, particularly the reestablishment of the Bank of the United States. Harrison reluctantly agreed to do so.

Harmony between the two men, however, was short lived. Senator Clay took offense at the rumored appointment of Edward Curtis to be Collector of the Port of New York City, the most lucrative patronage job of that era. Since Curtis has led the opposition to Clay's nomination for president in 1840, Clay strenuously protested against his receiving such a reward. Nevertheless, Harrison nominated Curtis, and relations between the president and the senator cooled instantly. Clay had made himself so irritating to the new president, with his insistance over the Curtis appointment, that Harrison tried to keep the senator away. One day a newspaper correspondent found Clay pacing in his room with a crumpled note in his hand. "And it has come to this!" Clay shouted. "I am civilly but virtually requested not to visit the White House—not to see the president personally, but hereafter only communicate with him in writing!" [3] This was even more of an insult in days when access to the president was much easier and informal than it is today. At that time, members of Congress, office-seekers, and the general public had considerable freedom to visit the White House, roam through its rooms, and attempt to see the president.

Henry Clay departed from Washington in great anger during the recess of the Congress, but he had every reason to believe that he could pass his program in the coming special session, despite his personal differences with the president. After all, they agreed upon most of the major issues in the "American System": a Bank of the United States, higher tariffs, and Federal support for internal improvements. But events changed rapidly. One cold spring morning President Harrison went out to do his own shopping at the market (another sign of the relative informality of that era). Caught in a rain shower, he took ill, and within days he died of pneumonia. Harrison had been president for just one month. Harrison's death was so unexpected that Vice President John Tyler was not even in Washington, and to be summoned from his home in Williamsburg, Virginia.

This was the first time that an American president had died in office, and the cabinet and the Senate faced serious questions in establishing precedent in the matter. Article II, section 1 of the Constitution merely provides that upon the death or resignation of the president, the duties of that office shall "devolve on the Vice President." But did this mean that the vice president became president in title, or was he acting president? Was he entitled to the salary of president? The Whig cabinet met and decided that Vice President Tyler should be called "Vice President of the United States, acting President," but John Tyler was determined to take on the full powers and status of the presidency. He would be president in name and in deed. When the Senate met in special session on June 1, 1841, Senator William Allen of Ohio moved to amend the traditional resolution notifying the president that Congress was in session, by inserting the words "the Vice President, on whom, by the death of the late President, the powers and duties of the office of President have devolved." Senator Benjamin Tappan, also of Ohio, supported the amendment and argued that if a colonel were killed in battle, his next of command would take charge of the regiment, but would not automatically become a colonel. Senator Robert Walker of Mississippi, however, asked if John Tyler was still vice president, why was he not there in the chamber, presiding over the Senate? (Again, in contrast to our current practices, the vice president in those days almost always presided over the Senate.) Obviously, the vice president could not fill two positions. The Senate defeated the amendment by a vote of 38 to 8, thereby recognizing that the vice president had become President of the United States.[4] Still many people recognized Tyler's claim to the presidency only begrudgingly. It was the custom in those days to refer to the president as "His Excellency" (a tradition that lasted until Theodore Roosevelt reached the White House). Tyler's opponent's however, always referred to him as "His Accidency." [5]

With the presidential succession settled, the Congress settled down to the work of enacting the Whig program. Senator Clay became chairman of the Senate Finance Committee in this first session of the Twenty-Seventh Congress, from which position he proceeded to introduce bills to repeal the Democrats' Independent Treasury System and enact the Whigs' National Bank. Lined up against Clay in the Senate were such powerful and effective men as John C. Calhoun and Thomas Hart Benton. Calhoun had returned to the Democratic fold, and now turned his penetrating intellect upon Clay's program. During one two-hour speech, the reporter of debates was so impressed that he added this editorial comment to the *Congressional Globe* (the earlier version of the *Congressional Record*): "His exposition of the original sin in which this measure has its birth, and the fatal consequences with which it is pregnant, was one of the finest, clearest, and most impressive arguments which he has ever delivered." [6] I wonder how we would feel if our reporters of debate commented on our speeches in the *Record* today!

Despite the strong opposition of Calhoun, Benton, and the rest of the Democratic members of the Senate, Clay was confident of victory because he knew he had the votes. The Whigs held a seven-vote majority in the Senate and some fifty votes in the House of Representatives, where Clay's ally, Kentucky Representative John White, was elected speaker. Clay's problem was not with the Congress, but with the White House, which was now occupied by a man who had never shown any sympathy to the "American System." When John Tyler was a senator he had voted against the Bank of the United States, he had opposed high tariffs, and he disliked the "centralism" of Clay's plan of federal funding for rivers and harbors improvement, road building, and other projects in the states. Tyler was clearly out of step with the Whig philosophy, allied to them only through their common opposition to the policies of Presidents Andrew Jackson and Martin Van Buren. Now Tyler himself was president. At first he tried to make his peace with his party. Tyler kept all of Harrison's Whig cabinet, and tried to remain close to Clay. He let it be known privately, and suggested publicly in his message to Congress, that he would accept the Whig program, if it met his specific objections. He conceded that Congress was best qualified to express the popular will, but reserved the right to veto any measure that he considered unconstitutional.

Henry Clay was not in a mood to compromise on his program. "I have a perfect Bank in my head," he had written to Senator Calhoun in March, and he meant to establish exactly the kind of Bank he had in mind. On June 7, Clay's Finance Committee requested that the Secretary of the Treasury submit a plan for a National Bank. On June 12, the secretary submitted a bill, which he worked out with President

Tyler. Its one major deviation from Clay's plan was a stipulation that the Bank could establish branches in the various states only with the permission of the states. Henry Clay considered that this States' Rights provision would fatally undermine and weaken the Bank. Although Tyler informed him that he was completely opposed to the Bank without such a provision, Clay was determined to press ahead with his own plan. "Tyler dares not resist," Clay told a friend, "I will drive him before me."[7]

In the meantime, the Congress acted quickly to abolish the old Independent Sub-Treasury of the Jackson and Van Buren administrations, and Tyler signed the measure. Jubilant Whigs marched in procession from the Capitol to the White House one evening, with torches, music, and fireworks—that was long before the Redskins were ever heard of—escorting a hearse carrying a coffin labeled "The Sub-Treasury." President Tyler, Secretary of State Webster, and other cabinet members had greeted the procession at the White House.[8] But the Whigs' jubilation soon changed to outrage. The Senate had enacted the National Bank bill, but without Tyler's States' Rights stipulation. "What he will do," Clay wrote to a friend, "is unknown to me or to his cabinet." What John Tyler did, on August 16, 1841, was to veto the Bank bill.

When the clerk finished reading the President's veto message to the Senate, the galleries erupted with applause and sounds of dissent. Senator Benton was immediately on his feet, saying that he had heard hisses in the gallery and that he felt "indignant that the American President shall be insulted." Another senator claimed not to have heard any hisses, but Benton insisted: "I am not mistaken, I am not." While the Senate debated, the Sergeant-at-Arms went into the gallery and apprehended the chief heckler, who expressed his penitence and was let go. When this fracas had died down, Henry Clay took the floor, and in a calm and dispassionate speech, called upon the Senate to override Tyler's veto. Clay, however, knew he lacked the necessary two-thirds margin to override, and indeed the vote was 25 to 24 against the president, and the override failed.[9]

There was still time in the special session to introduce the Bank bill once again, and Clay brought forward a revised version which he worked out with Tyler's cabinet. This time they would not call it a National Bank, but a "Fiscal Corporation of the United States,"—sounds a good bit like the bill I introduced today—to appease the president. But Tyler was angered that the final version of the bill was not submitted to him for approval. What was occurring was a power struggle between the president and the influential Senator Clay for control of the Whig party. Each one wanted the nomination for president in 1844, and neither was willing to appear to follow the other, or capitulate to the other, on the Bank issue. On September 9, Tyler vetoed the Bank bill a second time. Henry Clay stood on the Senate floor and pointed out that Tyler had signed the bill abolishing the Sub-Treasury, but had now twice vetoed proposals to replace it, "and there being no other system that any one ever dreamed of in this country for receiving, safeguarding, and disbursing the public money," Clay speculated that the wit of man could never devise a financial system that would satisfy President Tyler.[10] Here Clay scored a valid point, for the president had taken a purely negative stand and had not offered an alternative program. That sounds like some of the things that have been said in our time and more recently.

Members of the president's cabinet did not learn of his intention to veto the Bank bill a second time until they read it in the New York *Herald*. The entire Whig cabinet then resigned, with the exception of Secretary of State Daniel Webster, who was involved in the negotiations to settle the disputed boundary between Maine and Canada, and wanted to see the treaty through to completion. Webster also was not inclined to follow Henry Clay's leadership. In Webster's view, Clay was dividing the Whig party as a device to further his own presidential ambitions. When Webster agreed to stay in the cabinet, Tyler rejoiced that "Henry Clay is a doomed man from this hour."[11]

In the Senate there were also rumblings that Clay was behaving in a dictatorial manner. There were no party floor leaders in the early nineteenth century, but there was not doubt in anyone's mind that Clay led the Whigs in the Senate. Sitting by a rear door in the old Chamber, Clay could inform incoming senators of the nature of the debate and the vote. He was the man pulling the party strings. The Democrats were quick to make this an issue. At one point during the debate over the Bank, Clay had fashioned a minor compromise and said: "If the clerk will follow me, I will dictate a modification, though I do not like to be a dictator in any sense." James Buchanan, then a Democratic senator from Pennsylvania, jumped to his feet and said: "You do it so well, you ought to like it." The Senate chamber was then filled with comments of "That's fair!" from various quarters.[12]

The special session of the Twenty-seventh Congress ended far differently than Henry Clay had imagined. Neither Clay nor Tyler had emerged victorious, and the Whig party was grievously wounded. Just before adjournment, Democratic Senator Arthur Bagby of Alabama—a large man with a bald head and a strong voice—turned during a speech to Whig Senator Oliver Smith sitting near him, and said: "Why don't you Whigs keep your promises to the American people?" Smith immediately responded: "Because *your* President won't let us!" Bagby stood still for a moment and then roared back: "*Our* President! Our President! Do you think we would go to the most corrupt party that was ever formed in the United States, and then take for our President the meanest renegade that ever left that party?"[13] Thus, although some Democratic members of Congress toasted the president for his vetoes, John Tyler was clearly a man without a party.

Before moving on from this special session, I should also like to note that it was at this time that the House of Representatives, growing larger with the expanding population of the nation, adopted its first limitation on debate, called the "One Hour Rule." Until that time, it was not uncommon for members of the House, like members of the Senate, to speak for several hours and several days on any one subject. But the Whig majority sought to impose some discipline and efficiency upon that body and restricted the maximum time that any member could speak on a given subject to one hour. Many members of the House were displeased with this rule, and claimed that no man could explain his views in just an hour. Senator Benton (who later became a member of the House) was particularly outraged over this limitation, which he said "has silenced the representatives of the people in the House of Representatives, reduced the national legislation to blind dictation, suppressed opposition to evil measures, and deprived the people of the means of knowing the evil that Congress is doing." In fact, the movement to limit speaking in the House was not yet over, and in 1847 the "Five-Minute Rule" on amendments was also adopted. These rules, as we know, have constituted some of the greatest differences between the procedures of the House and the Senate, for in this body unlimited debate—we refer to it as debate being unlimited at times—is still the rule in most cases.[14]

The Twenty-Seventh Congress stood adjourned until December 1841, when its members returned to resume their battle with President Tyler. This was the Senate during its "Golden Age of Debate," with Clay and Calhoun as its most prominent members, and Webster absent at the State Department. Here is the journalist Ben: Perley Poore's description of some of the other members of that Senate:

/William/ Preston's flexible voice and graceful gestures invested his eloquence with resistless effect over those whom it was intended to persuade, to encourage, or to control. /Alexander/ Barrow of Louisiana, the handsomest man in the Senate, spoke with great effect. /Samuel/ Phelps, of Vermont, was a somewhat eccentric yet forcible debater. Silas Wright, Levi Woodbridge, and Robert J. Walker were laboring for the restoration of the Democrats to power. / Thomas Hart/ Benton stood like a gnarled oak tree, defying all who opposed him. /William/ Allen, whose loud voice had gained him the appellation of "the Ohio gong," spoke with his usual vehemence. Franklin Pierce was demonstrating his devotion to the slave-power, while Rufus Choate poured forth his wealth of words in debate, his dark complexion corrugated by swollen veins, and his great, sorrowful eyes gazing earnestly at his listeners . . . In the Senate he had no equal as an orator. His elaborate and brilliant speeches were listened to with earnest attention by the other Senators, who would now be convulsed with laughter and then flooded with tears.[15]

When the second session of the Twenty-Seventh Congress convened, Senator Henry Clay immediately demonstrated that he had not finished his war with Tyler, by introducing a series of proposed constitutional amendments. These amendments would have reduced the vote necessary to override a presidential veto from two-thirds to a simple majority, and would have taken the appointment of the Secretary of the Treasury away from the president and given it to the Senate and House. Clay argued eloquently that the president should have no role in the formulation of laws, which was the domain of Congress. The president's function instead was to administer the laws passed by Congress. His amendments would stop the "Executive encroachment" on legislative prerogatives. Of course, we know that these amendments were not adopted. Southern Democrats in particular argued strongly that the federal system was not designed to be run by a simple majority, but by a restrictive system of checks and balances designed to protect the rights of the minority. In this argument they clearly had in mind, although they did not say so openly, the protection of that "peculiar institution," slavery.[16]

With the Bank clearly a dead issue, Clay turned his attention to the second pillar of his "American System," the tariff. On February 18, 1842, Clay introduced a memorial from industrialists in Bedford County, Pennsylvania, asking for repeal of the "Compromise Act" of 1833—which had ended the Nullification Crisis—and imposition of tariff rates on certain items which would encourage domestic manufacturing. Without going into great detail on this matter, the Compromise Act of 1833 provided for sharp reductions in the tariff after July 1, 1842. But tariff revenue, in those days before income taxes, was the chief source of government income. This was how the federal government supported its military, improved its rivers and harbors and other internal projects, and paid off its deficit. The federal deficit in 1842 was $13.5 million, amazingly small to us in these days of a trillion dollar deficit, but awesomely large to America in the mid-nineteenth century. The Whigs proposed to extend the tariff rates beyond the July 1 deadline. For Senator John C. Calhoun, however, this was a noxious policy. Calhoun saw the tariff as "the most vital of all questions," designed to protect northern industry at the expense of Southern agriculture. To Calhoun, it was the accumulation of tariff revenues in the Treasury that had "destroyed the banking system and deranged the whole business of the country" over the past decade. Calhoun fought Clay's proposal with all his might, but lost in the Whig-dominated Senate and House. However, President Tyler once again used his veto power to reject a major Whig proposal. Outraged Whigs supported Clay's proposal to reduce the vote necessary to override presidential vetoes from two-thirds to a simple majority—but they lacked the two-thirds margin necessary to enact it. It was a frustrating time for the Whig party.[17]

Henry Clay and John C. Calhoun, the antagonists in this and many other Senate battles of the era, are among the five most "significant" United States senators painted on the walls of the Reception room, just outside this chamber. While they served together, they were great rivals for national leadership, and their relationship was so strained that years would go by without their speaking to one another, except in the cross-fire of debate on the floor. Their animosity toward each other reached a peak in 1842, to be broken by a surprising announcement. Henry Clay had decided to withdraw from the Senate to prepare for the upcoming presidential elections.

Clay welcomed the opportunity of some rest and relaxation, but he also wished to remove himself from the immediacy of political debate and controversy. It was then, and perhaps still is, an odd factor of American politics that the less well known a presidential candidate is, the more hidden his views on the issues, the more likely he is to succeed. Governors have traditionally been more successful as presidential candidates than have senators. Governors were not likely to have taken outspoken stands on controversial issues; unlike members of Congress, they were not required to cast rollcall votes that might offend one group of voters or another. While many presidents had served in the Senate, they had usually been absent from the Washington political scene at the time of their nomination and election.

Clay had been passed over for the Whig nomination in 1840 in favor of that nebulous political figure, William Henry Harrison. Clay was now the undisputed head of the Whig party, and he planned to consolidate his leadership and unite his party for the 1844 election from the comfort and security of his estate in Lexington, Kentucky.

On March 31, 1842, Henry Clay arose in the Senate chamber, before crowded galleries, and formally announced his retirement.

At the time of my entry into this body, which took place in December 1806, I regarded it, and still regard it, as a body which may be compared, without disadvantage, to any of a similar character which has existed in ancient or modern times.

Clay begged forgiveness from those whom he might have wronged during his years in the Senate:

Mr. President, that my nature is warm, my temper ardent, my disposition in the public service enthusiastic, I am ready to own. But those who suppose they may have seen any proof of dictation in my conduct, have only mistaken that ardor for what I at least supposed to be patriotic exertions . . . And now, in retiring as I am about to do from the Senate, I beg leave to deposit with it my fervent wishes, that all the great and patriotic objects for which it was instituted, may be accomplished—that the destiny designed for it by the framers of the Constitution may be fulfilled—that the deliberations, now and hereafter, in which it may engage for the good of our common country, may eventuate in the restoration of its prosperity, and in the preservation and maintenance of her honor abroad, and her best interests at home.

Henry Clay, as he spoke these words, was sixty-three years old, and in poor health. He was described as old and careworn in appearance, with a voice trembling in deep emotion. His colleagues in the Senate and visitors in the galleries were deeply moved. When Clay had completed his remarks, his long-time rival Calhoun stood, and "with tears running down his face," crossed the chamber with his hand extended. The two old combattants embraced. "I don't like Henry Clay," John C. Calhoun later said. "He's a bad man, an imposter, creator of wicked schemes. I wouldn't speak to him but, by God, I love him."[18]

Henry Clay's retirement from the Senate did not lessen his political power nor increase President Tyler's support in Congress in the slightest way. Indeed, in March 1843 the Senate handed the president a series of stinging rebukes that are still unique in the history of this institution. On March 3, 1843, the last day of the stormy Twenty-Seventh Congress, President Tyler, as was the custom, journeyed to Capitol Hill, and entered the Vice President's room across from the old Senate chamber, a room currently occupied by Senator Howard Baker, the majority leader of the Senate. There Tyler proceeded to sign the last bills

of the Congress, and to submit last-minute nominations, for the Congress would then be adjourned until December. President Tyler submitted the name of Caleb Cushing, Whig congressman from Massachusetts, to be Secretary of the Treasury. Cushing was a quick-tongued, sharp-minded individual who had been among the most outspoken defenders of the president in the House, and among the most caustic critics of the "caucus dictatorship" of Clay and other anti-administration Whigs. It was not all that surprising, therefore, when the Senate rejected Cushing—although it was only the second time in history a cabinet member had not been confirmed. What was surprising was the return of the president's private secretary with the renomination of Cushing. While the first vote for Cushing had been 19 to 27, the second was only 9 to 27 in favor. Now the secretary returned a *third* time, with a hastily written note: "I nominate *Cushing* as Secretary of Treasury." For the third time within the same day, and within the same hour, the Senate rejected the nomination of Caleb Cushing, this final time by a vote of 2 in support and 29 in opposition. So the support continued to dwindle.

This was a late night session of the Senate, on the last day of the Congress—how well we remember those late-night sessions on the last day of the Congress—and we may guess at the anger and fervor on both sides of this dispute, as the president adamantly clung to his nomination of his close friend, Representative Henry Wise of Virginia, to be minister to France. Twice the Senate rejected him. Tyler nominated Congressman George H. Proffit of Indiana to be minister to Brazil; he was rejected. Tyler nominated David Henshaw to be Secretary of the Navy; the Senate rejected him—only eight members voted in his support. James Porter received only three votes for his nomination as Secretary of War. John C. Spence, nominated to the Supreme Court, was rejected by a 21 to 26 vote. "Mr. Tyler," said Senator Thomas Hart Benton, "was without a party . . . The incessant rejection of these nominations, and the pertinacity with which they were renewed, presents a scene of presidential and senatorial opposition which had no parallel up to that time, and of which there has been no example since." [19]

President Tyler, though rebuked, remained unbowed. He had every intention of running for reelection and winning on his own, if not with the Whig party, then with the Democratic party; and if not with the Democratic party, then he would create his own party. The vehicle on which he intended to ride to triumph was the annexation of Texas. Representatives of the Texas Republic were in Washington lobbying for union with the United States, and there were rumors that the British were seeking commerical ties with Texas and to keep Texas independent. Tyler's move to support Texas' annexation cost him a Secretary of State, for Daniel Webster, having completed his negotiations with Britain over the Maine boundary line—the famous Webster-Ashburton treaty—handed in his resignation on May 8, 1843. Tyler replaced Webster with Abel Upshur of Virginia, a man devoted to slavery and the expansion of the United States to the southwest, where slavery and southern agriculture could spread. Upshur was involved in secret negotiations with Texas, when he was killed in a freak accident on the Potomac, when a cannon on the battleship *Princeton* exploded. To succeed Upshur, President Tyler appointed Senator John C. Calhoun. (Making an interesting historical footnote: the three Senate "greats," Clay, Webster, and Calhoun, each served as Secretary of State.)

Calhoun became Secretary of State on April 1, 1844, and the treaty with Texas was signed on April 12. But when Secretary Calhoun sent the treaty to the Senate he complicated matters by injecting the issue of slavery. Calhoun had been concerned with a message from British Minister Richard Pakenham, indicating that Britain, while it opposed slavery and the spread of slavery, would not interfere in Texas. Calhoun responded that slavery was a beneficial institution, to the slave as well as to the American economy. Calhoun suggested that the annexation of Texas would protect the institution of slavery there, and would in turn protect the interests of the United States, for slavery was "a political institution, essential to the peace, safety, and prosperity of those states of the Union in which it exists." The Calhoun-Pakenham correspondence was included in the material submitted to the Senate with the treaty. This correspondence was confidential, but treaties, being executive business, were conducted in executive session of the Senate, and in those days all executive sessions of the Senate were closed to the public.

However, Senator Benjamin Tappan of Ohio, an abolitionist, leaked the correspondence to the newspapers causing a sensation throughout the North, and linking in many minds the annexation of Texas with the spread of slavery.[20]

Texas was an inflammatory issue, one which the two leading candidates for president wished very much to avoid during the 1844 campaign. Former President Martin Van Buren expected to be renominated by the Democratic party. On a visit to Henry Clay's Lexington estate, Van Buren appears to have made an agreement with Clay to neutralize the Texas issue. In April 1844, both Clay, the Whig, and Van Buren, the Democrat, published letters in their party papers opposing the annexation of Texas. While these two wily political operators may have thought they had removed Texas from the campaign, they were both sadly mistaken. Their agreement cost them both dearly. The Democratic convention in Baltimore rejected Van Buren as their standard bearer, and chose instead the first "dark-horse" candidate, former speaker of the House James K. Polk, who supported Texas annexation. The Whigs chose Henry Clay, but, as we know, the voters chose Polk. As for John Tyler, his attempt to ride the Texas issue to reelection was unsuccessful. As Senator Benton described it, Tyler "continued his march to the Democratic camp—arrived there—knocked at the gate—asked to be let in, and was refused. The national Democratic Baltimore convention would not recognize him." [21]

The Baltimore convention is also tied intimately to the history of the Senate because it provided the opportunity of demonstrating the new "magneto-telegraph" of Professor Samuel F. B. Morse. Most of us at one time or another have passed the bronze plaque downstairs on the first floor corridor, just outside the Old Supreme Court Chamber, commemorating Morse's first long distance test of the telegraph, all the way from Washington to Baltimore, on May 24, 1844. Morse had been demonstrating his invention with a hook-up from the Senate to the House wings of the Capitol, until the Congress passed a $30,000 appropriation to see if the system of sending messages by electric impulses could work over a sizeable distance.

We all remember from our school days the history lessons how Morse sent out the first message: "What God Hath Wrought." What we may not remember are the messages that came back from Baltimore. There the news was all centered on the Democratic convention and the surprise nominations of James K. Polk for president and Senator Silas Wright for vice president. Senator Wright was in the Capitol when the news was received over the wire that he had been nominated. Morse then sent back his reply to Baltimore: "Washington. Important! Mr. Wright is here, and says, say to the New York delegation, that he cannot accept the nomination." The Democratic convention did not completely trust this new invention and again sent word that Wright was nominated. This was the response: "Again, Mr. Wright is here, and will support Mr. Polk cheerfully, but cannot accept the nomination for vice-president." It was not until Wright sent a hand-written letter delivered by special messen-

ger that the convention would accept his refusal and instead nominated George Dallas. As news from the Baltimore convention came in over the wires, Professor Morse would post the dispatches on a bulletin board in the Rotunda. So, as we pass the ticker tape machines in the Senate lobby, pouring forth the most up-to-the-minute reports, I hope my colleagues will reflect that the first "wire service" began right here in the Capitol.[22]

Although he had been shut out of the presidential race, John Tyler went ahead with his plans for annexing Texas. Tyler submitted the treaty to the Senate, but found Northern opposition—based on the fear of spreading slavery and the potential for war with Mexico—too strong to overcome. On June 8, 1844, the Senate voted 35 to 16 in favor of the treaty, but this was one vote short of the necessary two-thirds margin. Tyler then proposed that Texas be incorporated by joint resolution, but neither house had acted by the time Congress adjourned on June 17. The presidential election that followed offered voters a clear choice on Texas, with Clay opposing annexation and Polk favoring it. But Henry Clay was himself a slaveholder and a defender of the "peculiar institution," although he was also president of the American Colonization Society, which proposed to emancipate the slaves and return them to Africa. Clay's positions were intolerable to Northern abolitionists. They supported James Birney's third-party candidacy for president on the Liberty party line, which drained off just enough anti-slavery Whig votes, particularly in New York State, to deny Clay the election. In addition to electing a president, the Democrats also gained majorities in both the Senate and the House.

Thus the election of 1844 turned the tide in favor of annexation of Texas. The sentiment for annexation was strongest in the House of Representatives, but chances in the Senate were still uncertain. Senator Thomas Hart Benton offered a resolution to try to ease Senate concerns about protecting its constitutional right to consent on treaties. His resolution would authorize the new president, having received his mandate from the people, to negotiate with Texas for its incorporation into the United States. The president could either abide by the terms of the congressional resolution, or draft a different treaty which he could submit to the Senate for ratification. The execution of the resolution, said Benton, would thus "devolve upon a president just elected by the people with a view to this subject, I have no hesitation in trusting it to him, armed with full power, and untrammelled with terms and conditions." The House adopted Benton's resolution by a 120 to 97 vote, while the Senate accepted it by the slim margin of 27 to 25. This was the first time that Congress had accepted a treaty and annexed territory by a joint resolution. But the Texas matter was not to be settled by the incoming president. Instead, the strong-willed John Tyler acted on his last day in office to invite Texas to join the Union under the terms of the Benton resolution. When the new president, Polk, made no effort to stop Tyler's emissary to Texas, Tyler had won his final victory. The government of the state of Texas was formally established on February 19, 1846. An outraged Senator Benton called President Tyler's action an audacious cheat, and an act "prolific of evil, and pregnant with bloody fruit. It established so far as the United States was concerned," said Benton, "the state of war with Mexico."[23]

Mr. President, there were many issues between the Senate and the new president, James K. Polk—the tariff, the Independent Treasury Act, the Oregon boundary controversy—but for the purpose of my talk today, I shall focus exclusively on the Senate's role in the Mexican war. With Texas as a state, the United States had inherited Texas' long held disputes with Mexico. Most pressing was the question of the border line. Mexico recognized the Nueces River as its boundary with Texas, while the United States insisted on the Rio Grande River. On June 15, 1845, the Polk administration ordered General Zachary Tayor to occupy a point on, or near, the Rio Grande, within the territory claimed by Mexico. It was not until March 1846, however, that Taylor and his force of 3,500 men (representing half of the United States Army at that time), reached the Rio Grande across from an encampment of some 5,700 Mexican troops. The Mexican general ordered Taylor to evacuate the area, and when the Americans refused to move, sent a raiding party across the Rio Grande. The Mexican troops attacked an American reconnaissance patrol, killed eleven Americans, wounded five, and captured forty-seven. On April 26, 1846, General Taylor notified President Polk that "hostilities may not be considered as commenced." Two weeks later, Polk sent his war message to Congress, the heart of which read:

> As war exists, and, notwithstanding all our efforts to avoid it, exists by the act of Mexico herself, we are called upon by every consideration of duty and patriotism, to vindicate with decision, the honor, the right, and the interests of our country.[24]

On the face of it, the Congress acted quickly and overwhelmingly to declare war. After only two hours of debate, the House of Representatives voted 174 to 14 for the war resolution. The next day, the Senate voted 40 to 2 in favor of war. The margin of the vote in the Senate, however, was greatly misleading. It obscured the partisan divisions and the shallowness of support for "Mr. Polk's war."

Members of the Whig party were deeply suspicious of Polk's objectives. They saw his aims as far greater than simply protecting Texas territory, but of conquest of vast new areas of the Southwest into which slavery could spread, and they saw no reason to fight to protect the expansion of slavery. Yet many Whigs were decendants of the old Federalists, who had destroyed themselves as a political party by their opposition to the War of 1812. The Whigs were frightened over the prospect of repeating this disaster and did not want to appear as obstructionists. The fight against the war resolution, therefore, was led not by a Whig but by a Democrat, Senator John C. Calhoun of South Carolina.[25]

Calhoun found himself in an odd position. Just a short time before, a Secretary of State, he had lobbied successfully for the annexation of Texas. Now, having once again returned to his Senate seat, Calhoun was troubled over the prospects of war. He could support a limited war, to repel the Mexican army from Texas, but not an all-out war to seize California and the rest of the Southwest—largely because this new territory would raise all over again the issue of slavery in the territories. He wished to consolidate the South's gains and not to jeopardize them. When the war resolution was read, Senator Calhoun was among the first to his feet, objecting to a quick vote. Because of the gravity of the matter, he asked for a "high, full, and dispassionate consideration." Of course, a declaration of war is perhaps the most difficult item for any nation to consider dispassionately. Calhoun and the Whig senators tried to slow down the proceedings by requiring the war resolution to be divided into two parts: the actual declaration of war to be referred to the Senate Foreign Relations Committee (chaired by the pro-war William Allen of Ohio), and the raising of arms and troops to fight the war to be referred to the Senate Military Affairs Committee (chaired by Thomas Hart Benton of Missouri, who harbored grave doubts about the war). Senator Benton, however, pledged that his committee would subordinate its own wishes to the will of the Senate and would provide whatever military provisions were necessary, whether to fight a limited defensive war, or an all out offense. The next day, both committees favorably reported out the war resolution.[26]

The Senate debate concentrated on whether or not the United States was already at war, and what response would be most proper. The legendary Sam Houston was then a member of the Senate from Texas and he had no patience for the legal technicalities being raised by opponents of the war.

Texas had been warring with Mexico for ten years, Houston argued, and by annexing Texas the United States had inherited that war. Mexicans had "marched across the river in military array—they had entered upon American soil with a hostile design," said Houston. "Was this not war?" [27]

Senator John J. Crittenden, Henry Clay's able successor in the Senate, offered the key Whig amendment to the war resolution. Crittenden would have deleted the words "to prosecute said war to a speedy and successful termination," and inserted instead the words "for the purpose of repelling the invasion, the President is hereby," et cetera. Crittenden's amendment lost by a vote of 20 to 26. Eighteen Whigs voted for the amendment, joined by South Carolina's two Democratic senators, John C. Calhoun and George McDuffie. The vote on this amendment, rather than on the war resolution as a whole, showed the true division of feelings over the Mexican war in the United States Senate. Significantly, when the final vote was taken on the war resolution, John C. Calhoun abstained.[28]

Calhoun's fears that the war with Mexico would become more of a detriment than an advancement of the southern way of life, that it would turn the slave labor system into a wedge between the North and the South within the political process, were borne out on August 8, 1846, when a thirty-two-year-old Democratic Congressman from Pennsylvania, David Wilmot, added a proviso to a bill appropriating two million dollars to aid negotiations with Mexico to settle the territorial adjustments as a result of the war. The Wilmot Proviso, as it came to be known, required that "neither slavery nor involuntary servitude shall ever exist in any part" of the territory won from Mexico during the war. At first, the Polk administration tried to mitigate the effects of the Wilmot Proviso by limiting it to just those territories taken north of the twentieth parallel, the Missouri Compromise Line, but their efforts failed in the House. The Senate did not act upon either the appropriation or the proviso before it adjourned. Thereafter, the Wilmot Proviso was added to other appropriations bills, passed in the House, and defeated in the Senate (where the slave-holding states constituted half of the votes, and where the votes of a few Northern sympathizers of the slave system could always be counted upon). It is impossible to express the passions and the consternation that the Wilmot Proviso stirred. For two years, said Senator Benton, the Proviso "convulsed the Union, and prostrated men of firmness and patriotism—a thing of nothing in itself, but magnified into a hideous reality, and seized upon to conflagrate the States and dissolve the Union."[29] Of course, we are not unmindful of similar attempts in recent years to add burning emotional issues as riders on other bills, especially appropriations bills, and we know how such actions can inflame passions on both sides of the issue, tie up the proceedings of the Congress, and make mutually agreeable compromise all the more difficult to attain.

Mr. President, the Mexican war, the expansion of the United States into the Southwest, and the Wilmot Proviso all shook loose the foundations of the American political coalitions that held this nation together. We must remember that in the 1840s the Democratic and Whig parties were not Northern or Southern parties. They were national parties. The Democrats may have been stronger in the South and the Whigs in the North, but they each had active organizations in all of the states. Historians and political scientists have found far more party unity in the voting in Congress than sectional unity. Northern and Southern Whigs joined together to vote for the National Bank, the tariff, and federally-funded internal improvements. In the Senate, historian Glyndon Van Deusen found "almost complete Whig unanimity, ninety-three percent of their number being generally opposed to expansionist policies, with the remainder only moderate expansionists." The Democrats also maintained a North-South alliance and voted with strong party unity.[30]

Such party coalitions and national unity could exist, however, so long as slavery remained an unspoken issue. As the 1840s progressed, it became more difficult to ignore or suppress this most sensitive issue. In many Northern states, like Massachusetts, the Whig party began to split between "Conscience" Whigs, those who opposed slavery, and "Cotton" Whigs, those who supported slavery—often textile interests that depended upon Southern cotton, which was produced by slave labor. It was John Quincy Adams, the "Conscience" Whig, who persistently introduced abolitionist petitons in the House of Representatives; and it was the prevalent "Cotton" Whigs who imposed a "gag rule" on Adams and the abolitionists in 1841. In the 1844 election, as I have said, it was the defection of many "Conscience" Whigs that cost Henry Clay the presidency. The division in the Whig party also made most difficult the role of Daniel Webster, who had returned to the Senate in March 1845, after his service as Secretary of State. By nature, Webster was a nationalist, a passionate defender of the Union, a seeker of healing compromises. But he also had to contend with the influence of the "Conscience" Whigs in his state, particularly such rising political stars as Charles Francis Adams (son of John Quincy Adams) and Charles Sumner. In one of his first floor utterances, a month after returning to the Senate, Webster spoke out against annexation of Texas, endorsing, he said, "the unanimous opinion of the legislature of Massachusetts . . . /and/ the great mass of her people." But Webster was absent from the Senate when the vote on war with Mexico was cast, and he was silent on the Wilmot Proviso. Addressing himself chiefly to tariff and fiscal issues, he walked a delicate tightrope across the middle of the slavery issue.[31]

In 1847 it became increasingly difficult to remain neutral on slavery or the Wilmot Proviso. During the last session of the Twenty-Ninth Congress, the Wilmot Proviso was added to the "Three Million" bill to appropriate funds for military support and the addition of Mexican territory. The House passed the bill with the proviso by a 115 to 106 margin, while the Senate defeated the proviso by a 21 to 31 vote. The Senate version was adopted in the conference committee. During the first three months of 1847, however, nine Northern states directed their senators to vote for the Wilmot Proviso.

Senator John C. Calhoun led the Southern opposition. On February 19, 1847 he introduced four resolutions on the slavery issue: first that the territories of the United States were the joint property of all of the states; second that Congress had no right to pass any law discriminating between the states and denying them equal rights; third that any law interfering with slavery would be in violation of the Constitution; and fourth that the people had the right to form the type of state government they chose with no conditions (such as the abolition of slavery) imposed upon them by the federal government. Calhoun defended his resolutions on the Senate floor and concluded by saying: "I am a planter—a cotton planter. I am a Southern man, and a slaveholder; a kind and merciful one, I trust—and none the worse for being a slaveholder. I say, for one, I would rather meet any extremity upon earth than give up one inch of our equality—one inch of what belongs to us as members of this great republic. What, acknowledge inferiority! The surrender of life is nothing to sinking down into acknowledged inferiority."

When Calhoun finished, Thomas Hart Benton of Missouri rose to call his resolutions "fire-brand." Calhoun responded that he had expected Benton's support as the representative of a slave-holding state. Drawing himself up Benton said that it was impossible to expect such a thing, "I shall be found in the right place—on the side of my country and the Union." Senator Calhoun never called for a vote

upon his resolutions. Benton interpreted Calhoun's action as really addressing the issue to Southerners, rather than to the Senate, in an effort to unite the Southern states against the Northern states.[32]

As Calhoun and Benton squared off against each other, Daniel Webster continued to work for compromise. He drafted an amendment to prohibit the acquisition of new territory through the war, but failed in his attempts. Webster dreaded the outcome of the war. If new territories were added, he saw nothing ahead but "contention, strife and agitation." Although Henry Clay was not a member of the Senate at this time (he would return for the last time in 1849), he added his own warnings from his temporary retirement in Kentucky. He urged Congress to "positively and emphatically disclaim and disavow any wish or desire on our part, to acquire any foreign territory whatever, for the purpose of propagating slavery, or of introducing slavery from the United States, into such foreign territory." [33]

I have limited my remarks to the Senate's debate over the Mexican war, and not to the military prosecution of that war. I have not spoken about the campaigns of General Zachary Taylor and Winfield Scott, which took American troops into the Mexican capital, Mexico City, and the campaigns of John C. Fremont in California. I have not talked of the great military victories, nor the great cost in lives. On February 2, 1848, a defeated Mexico signed a treaty of peace with the United States, the Treaty of Guadalupe Hidalgo, which recognized American claims to the land north of the Rio Grande, and ceded to the United States a vast area which now includes the states of Arizona, New Mexico, Nevada, California, Utah, Colorado, and Wyoming. President Polk submitted this treaty to the Senate on February 23, 1848, and it is a touching reminder of the human sacrifices of this war that on that same day, Senator Webster learned of the death of his son, Edward, in Mexico as a result of typhoid fever. A year earlier, Henry Clay's son had been killed at the battle of Buena Vista. All told, 13,000 Americans died in the war, more as the result of disease than military injury. The war had lasted longer, and cost more lives than its supporters had predicted, but it had also expanded the size of the United States far greater than they had suspected. The war's long-term consequences were also unanticipated, in that first flush of victory in 1848.

The late historian of the Civil War, Professor Avery Craven, has called President James K. Polk both a great success and a great failure. Polk succeeded in fulfilling all of his promises in the election of 1844: the incorporation of Oregon and Texas, a lower tariff, an independent treasury system; but he was a failure in finding solutions for the problems created by the vast expansion of the country which he had secured. On the Senate floor, Daniel Webster pointed to the dangers of such a dramatic growth of the country, preferring gradual growth to such sudden and wholesale expansion. "It has long been my purpose to maintain the people of the United States, what the Constitution designated to make them, one people, one in interest, one in character, and one in political feeling," said Webster. "If we depart from that, we break it all up." [34]

On March 10, 1848, having defeated the Wilmot Proviso again by a wide margin, twenty-six Democrats and twelve Whigs joined together to provide the necessary two-thirds vote to ratify the treaty. Seven Democrats and seven Whigs voted against it (the opposition coming largely from those who wished to annex all of Mexico). On July 4, 1848, President Polk proclaimed the treaty in effect.[35]

Mr. President, in my next address I shall discuss the consequences of the American victory in the Mexican war: the effects on the turbulent election of 1848, and particularly on the great constitutional crisis of 1850, perhaps the most important debate in the United States Senate during the entire nineteenth century, the last hurrah of the three great senators of that era, Henry Clay, John C. Calhoun, and Daniel Webster.

These men so dominated the Senate during that era that we often lose sight of the many other significant figures from our history who also served as members of the United States Senate. I have spoken frequently of Thomas Hart Benton, "Old Bullion Benton," the "Magnificent Missourian," in part because he was such a giant figure in the debates of the Senate, but also because he left us his magnificent two-volume reminiscences, *Thirty Years' View*, which is really a running commentary on the events of Congress from 1820 to 1850. Other major figures in the Senate during the 1840s included Rufus Choate of New York, Robert J. Walker of Mississippi, David Atchison of Missouri, Sam Houston of Texas—who, by the way, wore red vests on the Senate floor and flirted with the ladies in the galleries—John Clayton of Delaware, Jefferson Davis of Mississippi, and Stephen A. Douglas of Illinois. Two future presidents of the United States served in the Senate at this time, Franklin Pierce of New Hampshire and James Buchanan of Pennsylvania. And a losing presidential candidate, Lewis Cass of Michigan, was also a prominent senator. In the years to come, however, they would all be overshadowed by an obscure one-term Whig member of the House of Representatives, whose service from 1847 to 1849 was so undistinguished that he would be a forgotten figure in history had his political career ended at the conclusion of his congressional term. I refer to Abraham Lincoln, about whom I shall have much more to say in the future as I discuss the years after 1848 while the Senate and the nation plunged towards a terrible conflict and the great State of West Virginia was born.

NOTES TO "EXPANSIONISM AND THE MEXICAN WAR" 1840–1848

[1] Glyndon Van Deusen, *The Life of Henry Clay* (Boston, 1937), 335.
[2] Ben: Perley Poore, *Perley's Reminiscences of Sixty Years in the National Metropolis* (Philadelphia, 1886), I, 245–6.
[3] Van Deusen, *Henry Clay*, 341.
[4] *Congressional Globe*, 27th Congress, 1st session, 4–5.
[5] Van Deusen, *Henry Clay*, 343.
[6] *Congressional Globe*, 27th Congress, 1st session, 372–3.
[7] Van Deusen, *Henry Clay*, 345–6.
[8] Poore, *Perley's Reminiscenses*, I, 271–2.
[9] Thomas Hart Benton, *Thirty Years' View* (New York, 1883), II, 350–1; *Congressional Globe*, 27th Congress, 1st session, 339.
[10] *Congressional Globe*, 27th Congress, 1st session, 450.
[11] Van Deusen, *Henry Clay*, 354–5.
[12] *Congressional Globe*, 27 Congress, 1st session, 48.
[13] Poore, *Perley's Reminiscences*, I, 280.
[14] Neil MacNeil, *Forge of Democracy, The House of Representatives* (New York, 1963), 47–48; Benton, *Thirty Years' Views*, I, 373.
[15] Poore, *Perley's Reminiscences*, I, 291–3.
[16] *Congressional Globe*, 27th Congress, 2nd session, 69, 164–7.
[17] Glyndon Van Deusen, *The Jacksonian Era, 1828–1848* (New York, 1959), 164–66.
[18] Benton, *Thirty Years' View*, 398–403; Van Deusen, *Henry Clay*, 356; Margaret Coit, *John C. Calhoun, American Portrait* (Boston, 1950), 349.
[19] Benton, *Thirty Years' View*, 629–631.
[20] Charles M. Wiltse, *The New Nation, 1800–1845* (New York, 1961), 183–184; Van Deusen, *The Jacksonian Era*, 183.
[21] Benton, *Thirty Years' View*, 362.
[22] John A. Garraty, *Silas Wright* (New York, 1949), 281–2.
[23] *Congressional Globe*, 28th Congress, 2nd session, 244–45, 358–363; Benton, *Thirty Years' View*, 532–38.
[24] *Congressional Globe*, 29th Congress, 1st session, 783.
[25] Ernest M. Lander, Jr., *Reluctant Imperialists: Calhoun, the South Carolinians, and the Mexican War* (Baton Rouge, 1980), 1–24.
[26] *Congressional Globe*, 29th Congress, 1st session, 783, 797.
[27] Ibid., 798.
[28] Ibid., 803.
[29] Benton, *Thirty Years' View*, 694–6.
[30] Van Deusen, "The Whig Party," in Arthur M. Schlesinger, Jr., *History of U.S. Political Parties* (New York, 1973), I, 351.
[31] Irving H. Bartlett, *Daniel Webster* (New York, 1978), 224–27.
[32] *Congressional Globe*, 29th Congress, 2nd session, 454–55; Benton, *Thirty Years' View*, 696–97.
[33] Bartlett, Daniel Webster, 231; Van Deusen, *Henry Clay*, 388.
[34] Avery Craven, *The Coming of the Civil War* (Chicago, 1966), 200–40; "The 1840s and the Democratic Process" in Craven, *An Historian and the Civil War* (Chicago, 1964), 82–97; and Bartlett, *Daniel Webster*, 236.
[35] *Congressional Globe*, 30th Congress, 1st session, 387–88; *Journal of the Executive Proceedings of the Senate* (Washington, 1887), I, 338–40.

(During Mr. BYRD's presentation, Mr. PRESSLER assumed the chair.)

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. I ask unanimous consent that I may proceed for 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

CHANGING OF VOTES BY SENATORS

Mr. BAKER. Mr. President, earlier I indicated that the Republican caucus had considered a recommendation to me on the policy toward changing votes by Senators. I wish to announce that on this side of the aisle it will be the policy during this session of the Senate to refrain from objecting to a request by a Senator to change his vote on a rollcall only if it meets the following three conditions: First, that the Senator personally represents that he was mistakenly recorded; that is to say, was recorded in error; second, that the request is made within 4 session days of the time of the rollcall; that is to say, within 4 days of Senate session at the time the rollcall was conducted; and, third, that the change would not affect the outcome of the vote. Otherwise, Mr. President, I will be requested to lodge an objection to unanimous-consent requests to change a vote.

Mr. BYRD. Mr. President, I have a little difficulty understanding the 4-day period. There is ample precedent for changing votes. If one has voted, he may ask unanimous consent to change his vote. I have done that I believe on one occasion during my 24 years in the Senate. Any Senator may object to that Senator's request. I think however, that inherently there is a good reason to establish a practice of objecting to the changing of a vote because this procedure could allow a Senator to change his vote if there were no objection, so that he would be on the prevailing side on an issue which had not been reconsidered. If a motion to reconsider is made within 2 days of session after the day on which that vote has occurred, that Senator could be the instrument whereby such reconsideration could be brought about.

There was one occasion this past fall that I remember very vividly when an extremely important matter was reconsidered some days after the event. Of course, I was on the opposite side of the majority leader on that. I thought at that time we should have moved to reconsider quickly so as to obviate that problem. But the majority leader can do what he has outlined without notifying anybody. He can object to the changing of a vote any time he wants to or any other Senator can do that, but I think that he is to be respected for putting the Senate on notice.

I personally see some deeper problems with the practice than those that were outlined by the majority leader, but I really cannot understand the 4-day provision. I could live with a direction that an objection be made to any such request unless it fulfills the other two requirements that the majority leader laid out.

Will the Senator enlighten me as to why 4 days instead of 1 or 3?

Mr. BAKER. I cannot. I must say to the majority leader, however, that I agree with him entirely and absolutely.

My personal preference would be simply to put the Senate on notice that it would be my intention to object to a Senator changing his vote at any time unless the conditions I described were met—that is to say, his personal assertion that the vote was recorded in error and, second, that it would not change the outcome.

However, there are some who feel that there might be a time lag in discovering that—for example, if there were a vote at the end of the day and it were not until the next day that it was printed in the CONGRESSIONAL RECORD, and they would be cut off.

Mr. BYRD. I think that would be a good case.

Mr. BAKER. So 4 days means 4 days in which the Senate was in session, 4 days on which the CONGRESSIONAL RECORD was printed. For example, that request would be made, and everybody would have an opportunity to examine the vote for that length of time.

The concern I have is that the vote might be changed weeks or months later, as it has been done according to the precedent of the Senate on some occasions.

It is an arbitrary formulation, but it is one I should like to try at this moment.

Mr. BYRD. I think the 1 day of time would be justified, because it is true that a Senator may not notice until the following day that his vote was misrecorded. I am talking about the following day of session, which could mean from Friday over to Tuesday or Thursday over to Monday.

I certainly think that the majority leader has made a good case. It is not within my prerogatives or power to dictate to the Republican caucus or conference, but if we are going to do it at all, I think it should be tighter than 4 days. I think it should be 1 day.

Mr. BAKER. Why do we not leave it as it is? I will consult further with the minority leader, and I will have a further statement of policy to make. Mr. President, I yield the floor.

EXECUTIVE SESSION

NOMINATION OF ELIZABETH HANFORD DOLE, OF KANSAS, TO BE SECRETARY OF TRANSPORTATION

Mr. PACKWOOD. Mr. President, as chairman of the Commerce, Science, and Transportation Committee, I want to express my strongest support for Elizabeth Hanford Dole to be the next Secretary of Transportation. The President could not have chosen any one better than Elizabeth Dole to replace Drew Lewis. His are difficult shoes to fill. However, I have the utmost confidence that Liddy Dole will do a superlative job. I can vouch for her ability and integrity. She is a remarkable person with a proven track record of dealing fairly and effectively with those both in and out of Government.

Elizabeth Dole and I have known each other for at least a decade and have been friends for a fair portion of that time. I can say without equivocation that she possesses the personal and professional qualities that make her an excellent choice for Secretary of the Department of Transportation. Her diverse experience and long background of service in the public sector should prove invaluable in her new role.

I look forward to working closely with Elizabeth Dole on the many important transportation issues that will be dealt with by our committee and the Senate.

In closing, I applaud Elizabeth Dole's appointment and hope that we will see continued movement toward representation of qualified women in Government.

Mr. MOYNIHAN. Mr. President, it is a distinct pleasure to rise in support of the nomination of Elizabeth Hanford Dole to be Secretary of Transportation.

Mrs. Dole's professional qualifications, which include service in the Department of Health, Education, and Welfare, Office of Consumer Affairs, the Federal Trade Commission, and her current position as Assistant to the President for Public Liaison—well recommend her for a Cabinet position. Indeed, the skill and aplomb with which she has handled these assignments suggests that hers will be an outstanding tenure as director of our national transportation policy.

Yet even more impressive are Mrs. Dole's personal qualities. She is smart, she is engaging, she is forthright, and she is, as her performances before the Commerce and Environment and Public Works Committees demonstrated, a very quick study.

I am delighted to support Elizabeth Hanford Dole for Secretary of Transportation and I look forward to working closely with her in the coming months.

Mr. SPECTER. Mr. President, I am pleased to rise today and add my voice

to those in support of the nomination of Elizabeth Hanford Dole for the position of Secretary of Transportation.

Mr. President, many have focused their attention on the fact, that if confirmed, Mrs. Dole will become not only the first woman appointed by President Reagan to head a Cabinet-level agency, but also the first woman to become Secretary of Transportation. I would like to focus on the 16 years of dedicated public service during which Elizabeth Dole demonstrated that she is eminently qualified to become Secretary of Transportation.

Mrs. Dole brings to the Department of Transportation a combination of legal, managerial, political, and Government experience which places her in an excellent position to run one of the largest and most diverse of the Federal agencies. After earning a bachelor's degree in political science from Duke University and both a master's degree in education and a law degree from Harvard University, Elizabeth Dole came to Washington and landed a job as a staff assistant in the old Department of Health, Education, and Welfare. There she planned the country's first National Conference on Education of the Deaf.

From HEW Mrs. Dole went on in 1966 to defend indigents in the District of Columbia court system. From 1969 through 1973, she served as Executive Director of the President's Committee on Consumer Interests and then as Deputy Assistant to the President for Consumer Affairs. In 1973, Mrs. Dole was appointed to the Federal Trade Commission where she worked as a Commissioner, promoting competition in the marketplace and eliminating unfair and deceptive market practices. In 1976, Mrs. Dole resigned from the FTC to work on President Ford's re-election campaign and again later, in 1979, to work on the Reagan Presidential campaign. Mrs. Dole now works in the White House as a special assistant for public liaison, reaching out to special interest groups and building support for the President's programs.

The skills which Mrs. Dole acquired during her years of extensive public service should prove invaluable to her as she comes to the Department of Transportation at this particularly trying time. The difficult agenda before Mrs. Dole includes further deregulation of the trucking industry, implementing the new highway reconstruction act, rebuilding the air traffic control system, and instituting maritime regulatory reform. Mrs. Dole's background and experience give her the capability to lead a major overhaul of the Nation's transportation system—a task which will affect the lives of nearly every American. In Elizabeth Dole, I have every confidence.

Her qualifications, impressive as they are as an individual, are enhanced with her association with her husband, the distinguished Senator from Kansas, Mr. DOLE. Their reciprocity, with each having such extensive governmental experience, inures to both of their benefits.

On a personal level, Mrs. Dole is extraordinarily charming. My wife, Joan, and I had the pleasure of being guests with Senator and Mrs. Dole at the Elks Club in Russell, Kans., in December 1980, and I observed her cordiality and grace as she greeted several hundred visitors. The occasion for that reception was that Senator DOLE and I both lived in and went to high school in Russell, Kans.

Based on my personal knowledge of Mrs. Dole and her outstanding background, I am confident that she will make an outstanding Secretary of Transportation and I am pleased to vote for and support her confirmation.

(Earlier the following occurred:)

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Kansas (Mrs. KASSEBAUM).

Mrs. KASSEBAUM. Mr. President, I thank the Democratic leader for yielding for just a moment. I should like to make some remarks about a fellow adopted Kansan, Elizabeth Dole, whose nomination will be voted on later this afternoon.

It is with great pride, as a Member of this body, a woman, and a Kansan, that I speak today on behalf of the nomination of Elizabeth Hanford Dole as Secretary of the Department of Transportation. Before discussing this nomination in terms of the contributions it will make to our national leadership, I want to indulge in a little parochial boasting. January 29, the date on which my home State entered the Union, has long been the focus of extensive "Kansas Day" activities. This year, Kansans have had cause to prolong this celebration of State pride—cheering on our native son John Riggins as most valuable player in the Redskins' Super Bowl victory and honoring our adopted daughter, Elizabeth Dole, as the newest addition to the Reagan Cabinet.

Needless to say, I believe that the President has made an outstanding selection for the post of Transportation Secretary. I have had the privilege of knowing Elizabeth Dole as a professional colleague and as a friend for several years. As a member of the Senate Commerce Committee and chairman of its Aviation Subcommittee, I am acutely aware of the many challenges transportation policy brings in the months ahead. I am pleased that the person who will be guiding the way on these issues is one in whom I have the greatest confidence and respect.

Elizabeth Dole brings to this position a record of past successes and a demonstrated capacity for thoughtful leadership. She is an intelligent and articulate person who will approach her new responsibilities with characteristic enthusiasm and diligence. I look forward to working with her in addressing future transportation issues.

Mr. President, as proud as I am to endorse this nomination, I know my pride pales in comparison with that of the senior Senator from Kansas (Mr. DOLE). My best wishes and heartiest congratulations go to both BOB and Elizabeth today. It is indeed a great day for Kansas—and for the Nation.

I thank the Democratic leader.

The PRESIDING OFFICER. The distinguished minority leader is recognized.

Mr. BYRD. I thank the Senator from Kansas, one of the most gracious Members of this body. I should like to associate myself with the words that she has spoken about the nominee for the Department of Transportation, Mrs. Dole, with whom I had a very pleasant visit the other day and of course at which time I spoke about some parochial matters of interest to me as a Senator from the State of West Virginia.

(Conclusion of earlier proceedings.)

Mr. THURMOND. Mr. President, I rise today in support of the nomination of Elizabeth Hanford Dole as Secretary of Transportation.

Mr. President, I do not believe that the President could have made a wiser choice for the second female member of his Cabinet. A North Carolina native, Mrs. Dole graduated with honors from Duke University and went on to Harvard University, where she earned graduate degrees in both education and law.

Her career in public service began at the Department of Health, Education and Welfare, dealing with programs for the education of the handicapped. In 1971, she joined the White House Office of Consumer Affairs, and she served as a member of the Federal Trade Commission for 6 years from 1973 through 1979.

In each of these posts, she distinguished herself as a capable and efficient public servant. Her remarkable ability to deal compassionately but effectively with people from all walks of life landed her a job as Assistant to the President for Public Liaison in the Reagan White House. There she has served with dedication and distinction as the President's goodwill ambassador to business, labor and a number of other constituencies with oftentimes diverse interests.

Of course, it should not be overlooked that Mrs. Dole has, for the past 10 years, served as the loving wife of the distinguished chairman of the Senate Finance Committee, Senator BOB DOLE. If ever a task required a quick wit and engaging personality, this must be it. All who have had the

pleasure of knowing her, as Mrs. Thurmond and I have, will certainly agree that Mrs. Elizabeth Dole is one of the most able, dedicated, and attractive women in public service today.

Mr. President, Mrs. Dole has exhibited those traits of character and intellect which will serve her well as Secretary of Transportation. I am certain that, in this post, as with all others she has held, she will serve her country and her President with the utmost distinction. I call upon my colleagues to support her nomination.

Mr. PRESSLER. Mr. President, I commend the President for his excellent choice of Elizabeth Hanford Dole as Secretary of Transportation. I believe that Mrs. Dole has all the qualities and capabilities necessary to meet the demanding and difficult challenges that await her as Secretary of the U.S. Department of Transportation. Her glowing record and background in Government service speak for themselves. I am extremely pleased to give Mrs. Dole my full and unequivocal support as she assumes this important position.

Mrs. Dole assumes this position at an especially critical and eventful time in transportation history. With the deregulation of almost all modes of transportation, which I generally opposed, and with the recently enacted Surface Transportation Assistance Act of 1982, Mrs. Dole will certainly have her hands full in the upcoming years. I look forward to working closely with her on these and other vitally important transportation issues.

I have had the pleasure of meeting and working with Mrs. Dole in the past, and have been very impressed with her abilities and public minded spirit. I am confident that she will serve her country well.

Mr. HOLLINGS. Mr. President, I rise in strong support of Elizabeth Dole's nomination for Secretary of Transportation. I feel confident that our national transportation system will remain strong with Mrs. Dole's expertise and leadership.

The operation of our national system continues to present many important and complex issues—the appropriate level of funding, and the proper role of the Federal, State, and local governments, to name a few. At the Commerce Committee's recent hearing on her nomination, I was impressed with Mrs. Dole's grasp of these many important issues and her willingness to work with Congress and the various interest groups to resolve them.

I was particularly encouraged by certain of her comments on economic regulation. In response to committee questions, she emphasized her recognition of certain dislocations which have occurred as a result of deregulation and of the importance of considering the economy in determining the merits of any future proposals to deregulate. I know she shares my concern that important transportation service be retained and that the transportation sector be able to attain economic stability.

Mr. President, we should also be heartened by her clear intent to establish transportation safety as a high priority at the Department. In the past few years, as part of the overall review of the role of the Federal Government, the scope of the Department's activities in safety has been questioned, particularly in the area of hazardous materials. We must continue to insure that the Federal Government remains a leader in transportation safety, a belief which I feel confident Mrs. Dole shares.

Finally, it is important to note Mrs. Dole's recognition of the significance of the Coast Guard and her commitment to keep it strong. I need not reiterate my concern over the need for adequate funding of the Coast Guard.

Indeed, I admire Mrs. Dole's history of impressive governmental service and her willingness to assume the awesome responsibilities associated with the position of Secretary of Transportation. As the new ranking Democrat on the Commerce Committee, I look forward to working with her closely on the many transportation issues facing us.

Mr. MATTINGLY. Mr. President, I am pleased to be able to rise today in support of the nomination of Elizabeth Dole as Secretary of Transportation. Without question, her credentials are impressive, and she should be a capable and effective Transportation Secretary.

She would bring to the position a mix of public and private sector experience. Foremost, she recognizes the need for a strong and more effective partnership with the private sector and State and local governments.

I read with interest a copy of Mrs. Dole's statement before the Senate Committee on Commerce, Science and Transportation. She highlighted in her statement several important transportation issues that she believes need addressing. I am particularly interested in and supportive of her position to work tirelessly to increase safety on our Nation's highways, particularly to deal with the problem of drunk driving. As the Department considers legislative initiatives to deal with this serious problem, I hope that the effort will be expanded to include the problems associated with persons driving under the influence of drugs. This, too, is a primary killer of innocent victims on our country's roads.

I have no doubt that Elizabeth Hanford Dole will soon be one of the most respected advisors and leaders of this Nation as the new Secretary of Transportation.

Mr. PERCY. Mr. President, I strongly support the confirmation of the nomination of Elizabeth Hanford Dole as Secretary of Transportation.

We all know Liddy Dole well, and have known her for many years—although not as well or as long as the distinquished Senator from Kansas. In my judgment, this is a superlative selection by the administration. Liddy Dole is bright, efficient, an inspiring administrator, competent, able, compassionate and yet tough. She effuses grace and charm. As the distinguished chairman of the Finance Committee said, she is an excellent choice.

Mrs. Dole graduated with distinction from Duke University, where she was president of the student body and elected to Phi Betta Kappa. She received a masters degree in education and a law degree from Harvard University, and planned the first National Conference of Education for the Deaf in the country in 1966. From 1969 to 1973, she served as executive director of the President's Committee on Consumer Interests and, in 1973, was appointed to the Federal Trade Commission. Since that time, she has served as White House Special Assistant for Public Liaison.

As Secretary of Transportation, Mrs. Dole has a tough act to follow in Drew Lewis, who did an outstanding job. Her assignment will be a tough one. Mrs. Dole will be responsible for implementing the recently enacted nickel-a-gallon gasoline users fee and the attendent funding for highway and transit construction and repair. She faces challenges with the Conrail system, the air traffic control system, as well as the President's proposal on ports included in the state of the Union message.

Illinois is the tranportation hub of the Nation, with the Nation's busiest segment of the Interstate Highway System, the first and second most active rail hubs, the second lengthiest segment of the inland waterway system and the world's busiest airport. Illinois has a deep interest in an active and efficient transportation program by the Federal Government. And, I look forward to working on these and other matters with my friend, Liddy Dole. She is a superb choice and I commend President Reagan.

Mr. LAUTENBERG. Mr. President, I am pleased to cast my vote to confirm President Reagan's nomination of Elizabeth Handord Dole as Secretary of Transportation. In her present and prior Government positions, Mrs. Dole has demonstrated an ability to take on a variety of difficult tasks and to manage them well. In her appearance before the Committee on Commerce, Science, and Transportation and in private discussions, Mrs. Dole has impressed me as someone who will quickly assume command of her depart-

ment and insure that its responsibilities are carried out. I am confident that Mrs. Dole and I will be able to work together on matters of mutual interest, and that when we disagree, we will be able to explore our differences in a sincere effort to reconcile them.

One area of particular concern to me is the administration's proposal, released yesterday, to rapidly phaseout Federal operating assistance to urban mass transit agencies. The proposal comes as a particular shock to New Jersey and other States that rely upon mass transit systems, as the Congress passed, and the President just approved, the Surface Transportation Assistance Act, which preserved authorization for operating assistance, albeit at 20 percent below fiscal year 1982 levels.

These operating subsidies are essential, if mass transit is to continue to be affordable for the 600,000 riders in New Jersey and the millions of mass transit users elsewhere. Without operating assistance, transit agencies would be forced to raise fares, pushing riders into their cars and onto overcrowded highways. In the case of New Jersey, a complete phaseout of operating assistance could force unprecedented fare increases and inflict a major jolt to New Jersey mass transit.

Mass transit is an essential part of New Jersey's transportation network and that network is the foundation of its economy. New Jersey needs continued operating assistance from the Federal Government.

I look forward to working with Mrs. Dole on this and other important issues concerning our Nation's transportation system.

The PRESIDING OFFICER. Under the previous order, the hour of 4 p.m. having arrived, the vote will now occur on the nomination.

The question is, Will the Senate advise and consent to the nomination of Elizabeth Hanford Dole, of Kansas, to be Secretary of Transportation? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from North Dakota (Mr. ANDREWS) and the Senator from Missouri (Mr. DANFORTH) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

I further announce that, if present and voting, the Senator from Hawaii (Mr. INOUYE) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 1 Exec.]

YEAS—97

Abdnor	Gorton	Murkowski
Armstrong	Grassley	Nickles
Baker	Hart	Nunn
Baucus	Hatch	Packwood
Bentsen	Hatfield	Pell
Biden	Hawkins	Percy
Bingaman	Hecht	Pressler
Boren	Heflin	Proxmire
Boschwitz	Heinz	Pryor
Bradley	Helms	Quayle
Bumpers	Hollings	Randolph
Burdick	Huddleston	Riegle
Byrd	Humphrey	Roth
Chafee	Jackson	Rudman
Chiles	Jepsen	Sarbanes
Cochran	Johnston	Sasser
Cohen	Kassebaum	Simpson
Cranston	Kasten	Specter
D'Amato	Kennedy	Stafford
DeConcini	Lautenberg	Stennis
Denton	Laxalt	Stevens
Dixon	Leahy	Symms
Dodd	Levin	Thurmond
Dole	Long	Tower
Domenici	Lugar	Trible
Durenberger	Mathias	Tsongas
Eagleton	Matsunaga	Wallop
East	Mattingly	Warner
Exon	McClure	Weicker
Ford	Melcher	Wilson
Garn	Metzenbaum	Zorinsky
Glenn	Mitchell	
Goldwater	Moynihan	

NOT VOTING—3

Andrews	Danforth	Inouye

So the nomination was confirmed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given it consent to this nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business to extend not past the hour of 5 p.m. in which Senators may speak for not more than 3 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO PRINT REPORT AS SENATE DOCUMENT

Mr. COCHRAN. Mr. President, I ask unanimous consent that a report to the Senate on a delegation mission to the People's Republic of China, which I recently led at the majority leader's request, be printed as a Senate document.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that the time for the transaction of routine morning business be extended for 10 more minutes under the same terms and conditions.

The PRESIDING OFFICER. Without objection, it is so ordered.

EL SALVADOR CERTIFICATION

Mr. CRANSTON. Mr. President, today, the Senate Foreign Relations Committee is conducting hearings on the President's certification of progress in human rights, in implementing essential political and economic reforms, and in other areas in El Salvador. Congress established this process through legislation I originally cosponsored in the Foreign Relations Committee. This process has proven to be a valuable mechanism for the Reagan administration, the Congress, and the public to gauge the situation in El Salvador. In addition, the process enables us to express our deep concerns about the use of American aid in El Salvador.

As with past certifications, I have considerable doubts about the administration's claim that the Salvadoran Government has improved its record on human rights or that it is any closer to gaining control over its military than it was 6 months ago. In light of the continuing atrocities perpetrated against the civilian population, this latest certification is a profound disappointment.

Glaring faults remain in the Salvadoran criminal justice system. For example, earlier this year Ambassador Deane Hinton affirmed that although some 30,000 Salvadorans have been

murdered since 1979, fewer than 1,500 cases of "crimes against persons" have been taken to court and "less than 200 have been sentenced for these crimes." Recently, the Salvadoran Government released the army lieutenant who is the principal suspect in the murders of two American labor advisers and the head of the Salvadoran land reform program. After 2 years, the cases of four murdered American churchwomen remain unresolved. And just last October, yet another American was murdered there, beginning another cycle of judicial obfuscation.

While the total number of violent deaths in El Salvador may have fallen in the last year, the decline has not been a steady one. And the decline may be partly a result of the violence moving into the countryside, where it is difficult to get accurate figures, and partly the result of the exodus or murders of many of the potential targets in the last few years. Even if the new numbers are accurate, they are still shocking.

In the last year, the Salvadoran Government's progress has consisted mainly of conducting an election with a remarkably strong turnout. In addition, the "land-to-the-tiller" phase of the land reform program advanced, but only after heavy U.S. congressional pressure revived it. Two of the three phases of the program, however, are dormant at best. I have been somewhat encouraged by Ambassador Hinton's recent statements warning the Salvadoran Government that the future of U.S. aid would be in jeopardy unless certain conditions are met.

These signs do not obscure the unremitting devastation wrought by El Salvador's civil war. The same bleak reports persist about the corruption, the disappearances, the exterminations, and the moribund legal system. The administration must express to the Salvadoran Government the outrage of the American people at the continuing situation there.

Several of my colleagues and I have been trying to convey this message through a number of measures. We passed legislation to implement this certification process. We called for unconditional negotiations and a cease-fire between warring factions in El Salvador. We attempted to amend the war powers resolution to prohibit any—even temporary—deployment of U.S. troops in El Salvador without congressional approval. During the mark-up of the foreign aid bill for fiscal year 1983, a unanimous Senate Foreign Relations Committee voted to hold military aid to El Salvador at fiscal year 1982 levels, cutting the Reagan administration's request by $100 million. Most recently, we attempted to attach an additional certification provision requiring the administration to certify that the Salvadoran Government has made substantial progress investigating the deaths of six Americans in that country. We in the Congress will continue to insist that progress be made in the coming months.

The administration must continue to press for the observance of human rights in El Salvador. The administration must press for the maintenance of the land reform program. The administration must press for progress on the cases of Americans murdered in El Salvador. Finally, the administration must press for an end to the bloodshed through cease-fire negotiations possibly including key members of the Organization of American States.

The United States must try to insure that the government we support is fully prepared to make the political, social, and economic changes essential to achieve an enduring peace. These changes, included in the certification provisions, hold the promise of ending the polarization between right and left in El Salvador. Unlimited military aid to the Salvadoran Government will not accomplish this goal.

RACING AGAINST OBLIVION

Mr. STEVENS. Mr. President, January 17 was honored throughout the Nation as Federal Employee Appreciation Day. I was pleased to have been a cosponsor of the legislation establishing that commemoration.

As someone who has been employed by the Federal Government for many years, I know of the contributions made by our fellow Federal employees. As an example of the outstanding work of Federal employees, I want to draw attention to an article which appeared in the January-February edition of Historic Preservation magazine on the fine work of the employees of the Historic American Building Survey.

The Historic American Building Survey, HABS, is a part of the National Park Service. This organization and the Federal employees who diligently pursue its goal of providing an historical record of the outstanding architectural heritage of this Nation are to be commended by all. They were especially helpful in providing assistance during the restoration of St. Michael's, the beautiful Russian Orthodox Church in Sitka, Alaska.

Mr. President, I ask unanimous consent to have the entire text of the article "Racing Against Oblivion" inserted at the end of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

RACING AGAINST OBLIVION

(By Andy Leon Harney)

It was 1933, the height of the Depression, and among the millions of unemployed Americans were thousands of architects, draftsmen and photographers. Plucky Charles E. Peterson was not among them. In fact, in the bureaucracy of the young, National Park Service, he held the title of Chief of the Eastern Division Branch of Plans and Designs. He was 26.

Peterson anguished over the plight of his less fortunate colleagues. He also worried about the nation's vanishing architectural heritage. New Deal programs such as the Civilian Conservation Corps, as well as restoration work at Williamsburg and Yorktown, gave the young architect an idea. In the great American tradition, he sent a memo to his boss urging that "If the great number of our antique buildings must disappear through economic causes, they should not pass into unrecorded oblivion."

Peterson's idea was greeted enthusiastically. And who stood ready to forestall the descent into oblivion but his unemployed colleagues. Thus was born the Historic American Buildings Survey (HABS). Peterson's inspiration sent nearly a thousand professionals across the country making precise measured drawings and photographs.

But it was not mere make-work. This year, on the 50th anniversary of the founding of HABS, the trove stored at the Library of Congress attests to Charles Peterson's vision: Of the nearly 20,000 structures recorded by HABS, an estimated 30 percent have been razed, making the design and historical data collected by HABS invaluable.

The breadth of the collection—it includes architectural details as well as plans and elevations of the structures themselves—is as varied as the ways in which it has been used by everyone from active restorers to ecclesiastical historians, genealogists, dollhguse makers and blacksmiths.

Massachusetts architect Russell Swinton Oatman, for example, turned HABS plans for Colonial and Victorian houses into working drawings for people who wanted to build exact replicas of historic houses.

"I just got tired of seeing really bad copies of so-called Colonial houses," he says, "so I decided to go to the original source and offer plans of real Colonials."

Since 1975 Oatman has sold more than 30,000 catalogs of plans and elevations of historic houses, many borrowed directly from the HABS collection, and has assisted in the construction of hundreds of houses.

Recorded on microfilm and microfiche, the HABS collection is carried at more than a hundred libraries and universities around the country, and, since it is in the public domain, it can be used with only a small charge. It is a staggering amount of data, but that is not the biggest source of satisfaction to HABS godfather Charles Peterson, still active at 76.

"I think the greatest contribution HABS has made is in training young architects to observe," he says. "It's often the first time they are exposed to historic buildings. They learn graphic analysis; they learn that you have to understand a building before you can draw it right."

Philadelphia restoration architect John Milner, who worked under Peterson in the 1960s, remembers well his stint as a HABS draftsman. A building with a handsome dormer molding was being torn down in Philadelphia, and Peterson ordered his young assistants to measure it for posterity. "We came back with the drawings," Milner recalls, "and Peterson was sure that the moldings tapered. So he sent us back to do it again. We did, they didn't taper, and we came back and told him so. Peterson complained that he had to do everything himself and dragged us down there again to make sure that the molding was correctly

measured and drawn—he could be very demanding." (The students were correct.)

A few years later, Milner recalls being sent on one of many emergency missions, this time to measure President Grant's doomed summer cottage in Long Branch, N.J. "I can remember being in the building with my tape measure as the crew was tightening the cables to pull the building down."

Now head of a Philadelphia architectural firm, Milner is still being called on to document buildings about to be torn down. As recently as last year the Bally Corporation asked him to measure a historic hotel in Atlantic City. Under an agreement with the state, Bally was allowed to raze the building only if measured drawings were made.

The New York State Landmarks Commission made a similar demand when developer Harry Helmsley wanted to tear down the Villard Houses on Madison Avenue to make way for his luxury Helmsley Palace Hotel. The buildings, which had been the offices of the Catholic Archidiocese of New York and Random House, are outstanding examples of McKim, Mead and White architecture.

"I think the documentation process really saved them, because the developers saw the advantages in retaining their rich architecture," says HABS supervising architect Ken Anderson.

With its usefulness—and longevity—a matter of record, HABS would seem destined to live on. Yet when HABS Chief Robert Kapsch was asked to name HABS' biggest priority, his response was quick: "survival."

Operating on a budget of less than $700,000 and with a staff of fewer than two dozen professionals, HABS would seem to be one of the most productive efforts ever sponsored by Uncle Sam. Yet until recently, management problems and a certain standoffishness had placed the program in jeopardy.

"We've been the egghead department for years, and, I must say, the way we used to keep house didn't gain us a lot of respect," one longtime staffer admits.

Until a few years ago, much material now housed in the Library of Congress languished in the files at the HABS offices in Washington, waiting to be processed, edited and sent over. Almost anyone could pick through the photographs, select what he liked and walk off with them. The arrival of an ambitious new archivist and a new administrator changed all that. But despite the strides (all the materials up to 1979 have been safely recorded on microfilm or microfiche), there is upward of 15 years accumulation of drawings and photographs yet to be processed and sent to the Library.

Although HABS and Library of Congress staffers are almost drowning in drawings and requests for information, there survive a noticeable dedication and esprit de corps.

Part of the pride comes from the fact that so many men and women associated with the program are alumni of the "summer-team" programs. For them it was not just another government job, but an emotional commitment, a part of their lives. Many of the country's leading preservationists are graduates of the program and its summer teams, including Ernest Connelly, former associate director of the NPS, Senior Vice President Russell V. Keune of the National Trust and former Keeper of the National Register William Murtagh, now a Trust Vice President.

Establishment of the National Register in 1966 created a new use for the collection as a resource for those who want to list properties in the Register or get restoration work certified. Not long ago, Library of Congress librarian Mary Ison recalls, two women whose National Register application had been rejected because their window restoration was not historically accurate spent an entire day looking at Colonial windows recorded by HABS. "They left the Library with looks of triumph," says Ison with a smile. "They had proof in their hands of a similar home of the same period with the same detailing. We get a lot of requests like that now that there are tax incentives for accurate restoration of certified buildings."

HABS also provides an invaluable record for structure that have been later damaged by fire or flood. Extensive photographic records of Franklin Delano Roosevelt's home at Hyde Park, N.Y., for example, are making it possible to accurately restore rooms damaged by the recent fire. Similarly, HABS documentation made possible the reconstruction of the oldest Russian Orthodox Church in Sitka, Alaska, also devastated by fire.

Thus HABS serves as a kind of national insurance policy. And it is that role that has turned out to be HABS' insurance policy, too. For the surveys current push is to document all major historic buildings owned by the National Park Service and all architecturally significant National Historic Landmarks.

In addition to recording landmarks, transfering documents to the Library of Congress and completing community surveys begun and paid for years ago, HABS staffers are also charged with fulfilling Executive Order 11593. In essence, it directs the Secretary of Interior to help other federal, state and local agencies identify, evaluate and preserve cultural resources.

The biggest project HABS is working on now is a $2.4-million contract to assist the Army's Readiness and Materiel Command in inventorying and documenting historic structures on the 71 Army bases under its control.

For much of its existence, HABS has been busy responding to crises—the poised wrecker's ball, the push to get information to the Library of Congress for dissemination. The subjects selected for documentation that were not trembling under the wrecker's ball have been a reflection of what was of popular interest at the time. In the early days, the push was documenting buildings built prior to 1860; now an attempt is being made to attract local interest in areas where the collection is weak—Kentucky, some of the western states, more current buildings.

As far as feisty Charles Peterson is concerned, popular interest in historic architecture has run amuck. "If anything has 12 inches of gingerbread on it, it's a national monument," he complains. "Victorian architecture is all right, but there's not much discrimination. Some people like horrible stuff, and they're making a cult of it," he says. Librarian Mary Ison also finds that the bulk of requests for drawings come from people interested in Victoriana and Frank Lloyd Wright.

But in fact, what HABS needs, beyond a mandate to insure its survival, is, according to Chief Kapsch, "a way to rationalize the collection—to come up with an identification of the kinds of users we have and how they use the material, and then to develop a strategy for meeting those needs." In the meantime, like many of the buildings they document, HABS' primary hope is for survival.

SECRETARY OF STATE SHULTZ: THE QUIET DIPLOMAT

Mr. PERCY. Mr. President, Secretary of State George Shultz recently returned from a 13-day trip to seven allied capitals. His mission was important and urgent because several disputes have shaken the NATO alliance. By all accounts, the Secretary masterfully applied his expertise and his willingness to listen and the results are described as "a victory for quiet diplomacy."

I commend one of the news accounts to my colleagues, and ask unanimous consent that an article by Michael Getler of the Washington Post appear in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. PERCY. Mr. President, Mr. Getler reports that Shultz achieved gains in many areas.

Those gains were in restoring a measure of trust to American leadership, polishing the Reagan Administration's badly tarnished image in Europe, achieving somewhat better unity within the Atlantic Alliance and, perhaps more importantly, defusing sharp disputes literally over bread, butter and ideology that threatened to tear apart the alliance.

Mr. President, good relations with our allies are critical to our national security and to our foreign policy and Secretary Shultz is working hard toward this goal.

EXHIBIT 1

[From the Washington Post, Dec. 19, 1982]

SHULTZ, THE QUIET DIPLOMAT, REASSURES WEST EUROPEANS

(By Michael Getler)

By all appearances, George P. Shultz has produced a victory for quiet diplomacy during his maiden voyage through Western Europe as secretary of state.

What remains to be seen after his 13-day journey through seven allied capitals ended yesterday is the durability of gains that Shultz clearly seems to have achieved.

Those gains were in restoring a measure of trust to American leadership, polishing the Reagan administration's badly tarnished image in Europe, achieving somewhat better unity within the Atlantic Alliance and, perhaps most importantly, defusing sharp disputes literally over bread, butter and ideology that threatened to tear apart the alliance.

The former corporate executive, business school dean and Treasury secretary showed himself able to apply his penchant for quiet problem-solving to foreign policy in this trip through West Germany, Belgium, the Netherlands, Italy, France, Spain and Britain.

Just one month ago, U.S. relations with France were severely strained. The French, who treasure their independence in all matters, deeply resented the White House's implication that France had made concessions in its attitude toward trade with Moscow to induce the United States to lift sanctions imposed on suppliers to the Soviet natural-gas pipeline project.

Yet last week, Shultz and French Foreign Minister Claude Cheysson sat together, formally attired, sipping brandies, calling each

other by their first names and explaining to reporters how they had agreed on new studies of trade with Moscow.

Just one month ago, the prospect of an agricultural trade war loomed between an increasingly angry United States and most of Western Europe's heavily subsidized producers.

Yet, 11 days ago in Brussels, Agriculture Secretary John R. Block told reporters that there would be somewhat of a truce while a group was established to study the problem more thoroughly.

Sitting next to Block was Shultz, a calm and pleasant man who does not ruffle easily and who, in private sessions with quarreling U.S. and European officials, had cooled the rhetoric and set up the study group.

The key word is "studies"—the business school approach, and that of Shultz.

The real test will come this spring when the study results are known. Only then will there be a clearer picture about whether allied willingness to compromise is real or disputes have merely been postponed.

In his five months as secretary, as in much of his career, Shultz has been known as a highly intelligent and effective conciliator, a management expert and economist who believes in talking things over and working things out.

If the study groups fail to produce compromise, Shultz the conciliator may become Shultz the fighter and arm-twister.

A somewhat related situation could develop with Spain's new Socialist government of Felipe Gonzales.

Shultz, who celebrated his 62nd birthday during the trip, and Gonzalez, 40, got along very well during a Madrid meeting, observers for both sides reported. The visit was deemed important because Gonzales, during his election campaign, promised to review and submit to public vote his predecessors' decision to join the North Atlantic Treaty Organization.

The United States wants Spain to stay in the alliance, and the Spanish government—certainly its military—is probably inclined to remain. Public opinion, however, seems to be against membership.

Shultz came to assure Gonzalez that the United States wants to deal with all elected democracies, even Socialist ones, and to put the young leader at ease.

But some Spanish observers believe it may be a year or two before Gonzalez is strong enough politically to try steering Spain into staying in NATO, if that is what he favors. Some allied officials believe that NATO will not tolerate that wait, forcing Shultz to exert pressure sooner rather than later.

The picture of Shultz as a pragmatist, an executor of Ronald Reagan's foreign policy instincts with no wide-ranging strategic concepts of his own in foreign policy (with the possible exception of the Middle East) seems accurate, but it is hard to tell for sure from the outside.

Although Shultz spent much time with reporters accompanying him, he revealed very little about himself or his ideas. He prefers little or no public discussion of issues by officials until internal govenment decisions are made.

He does not seek publicity, makes as little news as possible and seems to prefer it that way. "The last thing he wants," one official said, "is to have something known as 'the Shultz Doctrine' of foreign policy."

His performance is in sharp contrast to that of his predecessor, Alexander M. Haig Jr. One U.S. diplomat summed up the feeling of many: "It's nice to have someone calm again."

While Haig and Shultz share similar views about the importance of Europe and the need for understanding its interests in Washington, Shultz appears to have a more positive effect on allied leaders. Some of this is due simply to the fact that after several years of sometimes bitter quarreling with Europe by several U.S. administrations, both sides seem anxious to settle down.

French President Francois Mitterrand, according to French officials, is said to have told colleagues that his meeting with Shultz was the best he has had in many years with a top U.S. official.

Shultz clearly benefits from his close relationship to Reagan. Europeans say they have far more confidence in what Shultz tells them because they always feared that Haig would be sabotaged by White House aides.

Most importantly, Shultz was welcomed in London because he is viewed as having skillfully persuaded the White House to lift the pipeline sanctions, widely perceived as ill-considered.

Shultz's favorable reputation abroad is also due to his style and presence. While he seems so low-key to reporters that it is frequently not clear how he feels about something, authority seems to flow naturally to him.

"In six months, Mr. Shultz has made a major mark upon the world. And he has certainly put his stamp on United States foreign policy," British Foreign Secretary Francis Pym said Saturday in a remark echoed generally in all capitals.

If Shultz is putting his own stamp on foreign policy, it may well be in boosting the link between international economics and diplomacy to new heights. He lights up when discussing economics, and he talks about it often with all foreign leaders.

Most importantly, they want to talk about it, especially with the international economic recession influencing so many foreign and defense policy decisions.

Like many Europeans, Shultz tends to measure security questions with a large dose of economic data rather than exclusively in terms of military power.

He is very committed to free trade and greatly concerned about the collapsing global economy, believing that most of the world's problems have economic roots. This, in his view, inhibits problem-solving, reinforces protectionism and ultimately keeps making problems worse.

His concentration on economics combines with a view that Europe, as an economic superpower, is central to U.S. interests and security.

In simple terms, his aides say, he believes that, if the West improves its economies, it will first help itself, improving cohesion within the alliance, making defense more affordable and reducing pressure to sell goods to Moscow at cut rates that could strengthen the Soviets.

It will also, he believes, eventually rejuvenate Third World markets, removing major instability the Soviets can exploit.

Shultz seems comfortable echoing Reagan's basic instincts about the Soviet threat. But he does not believe that economic pressure will humble Moscow, his associates say, and tried to reach out cautiously throughout this trip with a message that the United States is prepared to respond positively to improving relations if the Soviets reciprocate.

Also apparent after the trip, however, is that even as confident a man as Shultz cannot be perceived as probing Soviet attitudes without worrying about ultraconservatives in Congress and the White House.

He complained about stories from the NATO meeting in Brussels that portrayed the alliance communique as generally more "conciliatory" in tone toward improving relations with Moscow than previous communiques. He also quickly issued a statement contradicting a wire-service dispatch edited to suggest that Shultz was "softening" his tone toward Moscow.

"Softening" was probably not the correct description, but the official party was concerned in both cases more with the impact on readers in official Washington than in Moscow.

Shultz went to Europe to extinguish some fires and to try developing a more cohesive allied policy toward the Soviets at a time of new leadership in Yuri V. Andropov. He also sought to bolster morale and unity so the alliance survives 1983.

Cheysson has said next year will present the most serious challenge to the alliance since the end of World War II because of the continuing recession and scheduled European deployment of the new U.S. nuclear-tipped Pershing II and cruise missiles.

THE FEDERAL ANTI-TAMPERING ACT

Mr. LEAHY. Mr. President, at the end of the 97th Congress the Senate adopted and sent on to the House a bill to impose stiff penalties on those who tamper with our food, drugs, and cosmetics. Following the President's veto of the entire anticrime package, which included the House version of an antitampering bill, we find the problem before us again. I am very pleased to join Senator THURMOND in cosponsoring this important legislation once again.

The antitampering bill fills a large gap in the protection of consumers against purposely adulterated food, drugs, and cosmetics. The crimes that have prompted our immediate attention to this problem do more than threaten and harm individuals. They eat away at the trust between members of our society. They threaten our sense of community.

There is a lot at stake, most obviously life and health. But something equally important hangs in the balance, and that is the trust that each of us need to go about our everyday lives.

Society itself is built on thousands—maybe countless—understandings among people that we must help each other to survive. At the very least, we must agree not to hurt each other. This feeling is part of the fabric of Vermont, where few people talk about social contracts, but everyone knows about being a good neighbor. We have to. Without a lot of mutual support, life in the country, especially during a harsh winter, would be risky.

Mutual trust is also the basis for our economic life. Without the unquestioned trust of consumers, it would be hard to market milk, cheese, or maple syrup. The expression "poison the well" speaks to the vulnerability of rural life. What would our lives be like

if all food—including vegetables—had to be sold in tamper-proof packaging?

The bill the Senate passed last year and now reintroduced is not unlike other antiterrorist legislation. Strong penalties apply where the tampering or attempted tampering occurs, whether or not anyone is hurt or killed. Even spreading false information about tampering is punishable if done maliciously. An intentional lie about tampering with one of the necessities of life can do as much harm and creates as much fear as the tampering itself. Rumors inspire other rumors. Enforcement officials and private industry often devote as much of their scarce resources to checking out false information as they do to pursuing actual threats. Police work is badly hobbled if sick people are free to poison our trust, if not our bodies.

Wherever speech of any kind is limited by law, there are legitimate concerns about how that law will operate and whether the first amendment is threatened. No one has ever framed a better reply than Justice Oliver Wendell Holmes, who said that no one has a right to yell fire in a theater. Many kinds of speech are really action, such as threatening another person's life or conspiring to commit a crime. Spreading false information about the things we eat or the drugs and cosmetics we use fits into that category.

During our deliberations in December, I was concerned about the first draft of the antitampering bill because I thought there should have been separate and appropriate penalties for those who spread false information leading to personal injury or death and for those who cause disruptions like product recalls, but no death or injury.

In the original bill the offenses were not sufficiently distinguished, and some conduct was penalized too severely. The end result might have been a law whose overall credibility was weakened. I proposed an amendment that was accepted by both Senate proponents of the bill and affected industries. The result was a fairer, and hopefully a more effective statute, and that language is maintained in the current bill.

This language should answer potential critics of the bill in the House or the Senate who might have regarded the penalties in the original text as excessively harsh.

I will have some additional ideas about making the bill even clearer and more effective, when it reaches the Judiciary Committee.

The tampering bill will not absolutely end product tampering any more than other criminal statutes have ended the crimes they address. But we have made a commitment to maintaining a world where trust is the rule and those who would assassinate that trust are treated for what they are—social saboteurs. I hope our effort will save lives and help to preserve the mutual trust so essential to our way of life.

WHY WE NEED FLEXIBILITY ON BOTH SIDES IN NUCLEAR ARMS REDUCTION TALKS

Mr. PROXMIRE. Mr. President, today's New York Times reports from Geneva that both the U.S. negotiators and the Soviet Union's negotiators in strategic arms reduction say that progress depends on the "attitude" of the other side.

The proverbial man from Mars, in reading about this prenegotiating public relations maneuvering, would assume that the superpowers will certainly agree to stop the suicidal arms race, and soon. But if the man from Mars spent a little more time considering the history of these and other negotiations, he would be far more skeptical and maybe tag the remarks of both sides as just blue smoke.

And how sadly disappointing that is. If the negotiations fail, we move dangerously closer to a nuclear war. If we could accept at face value the language the negotiators are using on the eve of their resumption, what a happy prospect for peace we could expect.

Consider: The American proposal calls for each side to reduce its total of intercontinental missile warheads from present levels of roughly 7,500 to 5,000 and for a cut in missile stocks to 850. Also, no more than half the warheads would be installed on land-based missiles, under the American plan. If the two superpowers could move in that direction, that might take more of a cut for the Soviet than for the United States but it is in the right direction: Hooray!

How about the Soviet Union proposal? They call for a 25-percent cut in all strategic delivery systems, both intercontinental missiles and long-range bombers, and for a freeze in the development of new strategic weapons. That obviously would let the U.S.S.R. maintain its present numerical advantage. But it does cut, that is, reduce weapons on both sides, and, most important, it freezes development of new nuclear weapons. That means a stop to the arms race.

Somehow we must persuade the U.S.S.R. that we want both parity and a freeze, and find a way to get it. We will not find that way unless both sides—I repeat, both sides—find a new flexibility. For those on both sides who want to live out their lives, that should not be too hard to understand. Let us pray both Mr. Andropov and President Reagan understand.

GENOCIDE CONVENTION AND COMMUNIST REPRESSION IN YUGOSLAVIA

Mr. PROXMIRE. Mr. President, for 38 years of Communist rule in Yugoslavia, there has been a clear and definite pattern of oppression directed against the Albanian population living in the Yugoslav province of Kosova. Nationality problems have been particularly pronounced in this poor region where citizens of Albanian descent constitute four-fifths of the province's population.

In the past, the Yugoslav Government has effectively held down the Albanians of Kosova, denying them proper schooling and arresting or killing outspoken dissidents. But in the last two decades, Albanian nationalists have struggled, in the face of severe repression by the Government, to have their province gain the status of a full republic, so that they may secede from Yogoslavia and unite with their home country, Albania.

Tensions that were mounting for years erupted into massive demonstrations and riots during the spring of 1981. International press reports have revealed the magnitude of the demonstrations as well as the degree of cruelty and indiscriminate use of brutal force by the Yugoslav Government against the unarmed Albanian students, workers, and farmers. Special army units and militiamen armed with machineguns were used to crack down on this great display of popular discontent.

After the demonstrations, the dead covered the streets and the wounded were left suffering on the ground. Official estimates claim that 9 people were killed during the riots, but Amnesty International estimates that the number of dead could be as high as 1,000.

Martial law has been in effect since April 1981, and the Government continues to engage in massive purges and condemnations. Meanwhile, the Albanians live in constant fear for their life and freedom.

Repressive measures by the Government have temporarily subdued the Albanians, but trouble continues to brew beneath the surface in this hostile environment. Any show of public dissent by the Albanian nationalists will surely be countered by a violently brutal reaction from government forces.

While other countries have condoned the use of this type of violence to prove a point, the United States has traditionally spoken out against repressive and violent actions by governments, recognizing that the bond of humanity is more important than problems arising over political, religious, or cultural differences. We must do everything in our power to uphold this tradition in our own country, and

to spread this human rights ideolology to other nations, in an effort to protect persecuted minorities like the Albanians in Yugoslavia.

One way to reaffirm our commitment to the prevention of human rights violations is to ratify the Genocide Convention, an international treaty which outlaws the extermination, or intent to exterminate, any national, racial, ethnic, or religious group. This is not to imply that the Yugoslav Government intends to exterminate the Albanian population, but the Communist regime has clearly threatened these nationalists for its own purposes, using violent tactics. Ratification of the Genocide Convention would give the United States more leverage to protest human rights violations like those occurring in Yugoslavia, even when an act of genocide is not being committed.

By supporting this document, we would prove to the world our willingness to take a small but positive step toward the elimination of genocide, a crime that violates the most fundamental human right, the right to live.

Let us ratify this treaty immediately, so that we can demonstrate in our actions as well as our words, our true commitment to the protection of human rights.

THE DEATH OF NADYA OVSISCHER

Mr. PERCY. Mr. President, on January 12 of this year, a valiant woman died in the Soviet Union, losing her struggle to be reunited with her daughter in Israel.

Nadya Ovsischer succumbed at age 64 to heart disease complicated by asthma, for which she had been hospitalized several times in the last year. With her husband, Col. Lev Ovsischer, a highly decorated fighter squadron commander in World War II, Nadya had been trying since 1972 to leave the U.S.S.R. to join their daughter Tanya in Israel.

I am sure that their many friends in this country and throughout the free world join me in sadness that Nadya Ovsischer's simple desire to live freely, near her daughter, will never be fulfilled. We all extend our sympathy to her husband and daughter who are still separated.

The policies of a government that keeps aged parents from their children are inhumane in the extreme. They are also senseless policies, for they bring no benefit to the state, while magnifying endlessly the mistrust with which the Soviet Union is viewed from abroad.

If the Soviet Union really wishes to be accepted by the rest of the world as a responsible nation, it could begin by eliminating practices that violate the human rights of its citizens.

It is too late for Nadya. But let the Soviet Union begin by allowing her husband, Lev Ovsischer, to join his daughter in Israel.

DEREGULATION OF THE TELEPHONE INDUSTRY

Mr. PRESSLER. Mr. President, this Congress must face many difficult and complicated problems. However, no issue has a greater or more immediate impact on every single American than the pending divestiture of American Telephone & Telegraph and the corresponding deregulation of the telephone industry.

I have followed developments on this matter with some concern and skepticism. Most recently, the Federal Communications Commission adopted rules to determine access rates for interexchange carriers (long-distance telephone service providers) and end users (phone service consumers). This ruling (CC Docket No. 78-72) combines elements of several proposals studied by the Commission. Last December, during the Commission's deliberations, I contacted FCC Chairman Mark Fowler about these proposals. I ask unanimous consent that a copy of my letter be included in the RECORD immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. PRESSLER. Mr. President, in the next several years, Americans will see far-reaching changes in the ways in which they obtain and pay for telephone service. Already this past month, the Bell Operating Companies (BOC's) have initiated changes in procedures for providing new and additional telephone service. These changes are the beginning of what is hoped will be a growing variety of telecommunications services and increased competition for the consumer dollar.

However, as a Senator from a rural State, I have been the reluctant witness to the negative effects of deregulation of rural public services such as rail and airline transportation. I do not want to see these same problems inflicted on rural farmers and ranchers as a result of telephone deregulation.

Mr. President, I recently received a letter from a farm wife in South Dakota, Mrs. Marie Fisher of Winner, S. Dak., which accurately explains the great dependence of our farmers and ranchers on affordable telephone service. I ask unanimous consent that Mrs. Fisher's letter also be included in the RECORD immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. PRESSLER. Mr. President, the last Congress held extensive debates on telecommunications legislation. The Senate wisely approved provisions in S. 898 to mandate a continuation of universal telephone service at reasonable rates. I urge my colleagues to join me in closely monitoring judicial and regulatory action in the coming months to guarantee dependable and affordable telephone service to all Americans.

(Exhibit 1)

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION,
Washington, D.C., December 1, 1982.

Re CC Docket No. 78-72.

Hon. MARK S. FOWLER,
Chairman, Federal Communications Commission, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to express my concern about the impact of CC Docket No. 78-72, the MTS-WATS Market Inquiry, on rural areas such as my home state of South Dakota. In this proceeding, the Commission proposes to replace the existing system of settlements and division of revenues by domestic common carriers with an access charge mechanism. The change appears necessary to accommodate the entry of multiple long-distance carriers, and the implementation of the recent AT&T consent decree. A change in the existing mechanism can only be justified, however, if it presents no danger to the continued availability of universal telephone service at affordable rates.

Presently, 96 percent of American homes enjoy telephone service, and more than 90 percent of rural families have access to telephone service. In 1949, only 55 percent of South Dakota's farms had telephones, while today, 95 percent have phone service. This increased service is due, in part, to a system of industry revenue division which provides sufficient monies to support moderately priced telephone service in high-cost rural areas. It is imperative that this service be maintained.

People who live in small towns and on farms and ranches, especially senior citizens, are very dependent on their telephones, particularly during months of bad winter weather. I understand that the Commission is considering changes which could add as much as $35 to the monthly phone bills of some South Dakota consumers. Such an increase would be an unacceptable burden on South Dakota farmers and small businessmen who are already suffering from a severely depressed farm economy.

Congressional concern for reasonably priced universal telephone service has been paramount since the passage of the 1934 Communications Act. A more recent reflection of this concern is the Senate's 90-4 passage of S. 898, the Telecommunications Competition and Deregulation Act of 1981, which mandated action necessary to continue universal service. Regulatory action which would price telephone service beyond the reach of most rural Americans would clearly run counter to Congressional intent, and be subject to vigorous opposition.

I urge you to carefully evaluate all options in this proceeding and avoid such adverse consequences to rural Americans.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

(Exhibit 2)

WOMEN INVOLVED
IN FARM ECONOMICS,
Winner, S. Dak., January 10, 1983.

Re CC Docket No. 78-72.

Hon. MARK S. FOWLER,
Chairman, Federal Communications Commission, Washington, D.C.

DEAR MR. CHAIRMAN: I read a copy of the letter Senator Pressler sent you dated December first, at our meeting last week and we were all very upset that our telephone rates might raise as much as $35.00. We are loosing more farms all the time which means that it is farther and farther to the nearest neighbor where help is available in case of an emergency. For this reason, it is very important to have a telephone because farming is now the most dangerous occupation and in case of accident or injury a telephone is a necessity. At the same time, with farmers loosing money an most farming operations, there is no way that we can afford that large an increase.

Another reason the telphone is a necessity is when repairs are needed, we call in and see if the repairs are available or if they have to be ordered in. This saves an expensive trip to town when they are not available in the local town or we can find them in another town.

Many times, farm women loose their husbands but they stay on the farm in their house and rent out the land. They do not have enough money to move to town but live a meager living by raising a few chickens and maybe milking a cow to supplement their income. They are very dependent on their telephone.

A telephone is very important to rural people but many of them can not afford an increase in rates.

Sincerely,

MARIE FISHER,
President.

THE REPUBLIC OF CHINA

Mr. THURMOND. Mr. President, during my years of service in the U.S. Senate, I have been a strong and consistent supporter of the free Chinese people of Taiwan. I have viewed this country as a longtime, loyal friend and ally of the United States in a very unstable area of the globe.

As the 98th Congress gets underway, I wish to reiterate my support for this island nation, as well as my desire to see the provisions of the Taiwan Relations Act (TRA) upheld.

The TRA affirms strong U.S. opposition to efforts directed at determining the future status of Taiwan by outside armed force, or economic warfare, including boycotts, or embargoes, or any means other than through peaceful negotiations. This act of Congress also stresses our determination to continue selling such military equipment to Taiwan as is determined to be necessary for their own self-defense.

As the People's Republic of China continues to expand and upgrade their own armed forces, it would be a drastic strategic error to deny Taiwan the military hardware essential for maintaining an adequate defense posture. Of course, any military equipment we sell to Taiwan or permit them to coproduce must be for defensive purposes only. Realistically, however, the small island of Taiwan poses no offensive military threat to its mammoth neighbor, mainland China, and Taiwanese Government leaders have no viable expectation of retaking the mainland by force.

The point that our Government must never forget is that Taiwan's viability as an economic entity, as well as politically, is directly related to its defensive capabilities. Commercially Taiwan is very important to the United States. Currently they are our seventh largest trading partner. In 1982, the volume of trade between our two countries ballooned to approximately $13.5 billion. Additionally, Taiwan has shown a great deal of cooperation in negotiating trade agreements with us. In the specific area of textile trade, Taiwan has been willing to restrict their export growth to American markets.

On the other hand, mainland China has proven to be extremely uncooperative in this area. Efforts to reasonably limit massive imports of cheaply produced and subsidized textile and apparel goods from the PRC have been met with both a stone wall of resistance and with retaliatory trade embargoes against a number of American products. These actions are unjustified, especially in light of the many concessions and advancements the United States has toward the PRC in recent years in an effort to improve relations.

Mr. President, I hope that my remarks are not misinterpreted. I am not advocating the start of another cold war in the Far East, and I applaud this administration as it attempts to preserve the delicate balance of relations with both Taiwan and the PRC. I simply feel that it is imperative that we do not shun the legitimate needs of our longtime friends on the Island of Taiwan. If we fail to demonstrate a strong commitment to our democratic allies in that area of the globe, it will jeopardize the credibility of U.S. policy in other parts of Asia and throughout the world.

Mr. President, I ask unanimous consent that an article entitled "Our One-China Approach: Bad Diplomacy, Bad Policy," be included in the RECORD at the conclusion of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Times, Dec. 20, 1982]

OUR ONE-CHINA APPROACH: BAD DIPLOMACY, BAD POLICY

(By Ray S. Cline)

American policy in Asia took the wrong track in 1979 when President Jimmy Carter abruptly severed diplomatic relations and broke the 25-year-old Mutual Defense Treaty with the Republic of China on Taiwan. The mistake was to proffer repeated unilateral concessions to the People's Republic of China, mostly at the expense of the security of the 18 million Free Chinese living on Taiwan. Such a headlong American campaign to gain the friendship of an oppressive communist dictatorship is bad diplomacy and bad policy. Now that Peking has milked all the benefits it could get out of the United States, the PRC is steadily, deliberately distancing itself from Washington and beginning a serious fence-mending exercise to see what Deng Xiaoping and Hu Yaobang can get from Moscow.

The heavy pressure from Peking on the U.S. government to cut off American arms sales to Taiwan and thus to force the Republic of China to "reunify" with the mainland is quite understandable from the PRC's point of view. Under the control of the Communist Party of China and the government of the People's Republic, Taiwan would be a real geopolitical plum, a triumph for communism in Asia.

Control of Taiwan by the PRC also would mean loss of guaranteed American access to the central island in the offshore Pacific chain of Asian insular and peninsular states stretching from Japan to Australia. In this West Pacific rampart, Taiwan is the bridge element, a guardian of the sea lanes linking Japan and Korea with Southeast Asia, the Indian Ocean and the Persian Gulf.

It can be taken for granted that the United States, as a great seapower, is moving in the wrong direction whenever it appears to forge strong military links with a nation lying deep within the continent of Eurasia, like the PRC, rather than with an island state along its periphery, like the Republic of China on Taiwan. Access to naval and air bases along the West Pacific barrier chain is an American strategic imperative. At a minimum, unfriendly military forces should not be allowed to break the chain. In communist control, whether Chinese or Soviet, the island of Taiwan would constitute a severe threat to the forward position of the United States in the West Pacific.

At present, in fact, the PRC has extremely limited capabilities to act for or against the United States. Its 800 million peasants, of a population of more than 1 billion, are barely surviving on primitive subsistence agriculture. The per-capita income of the whole nation is about $285 a year. The armed forces are huge, but equipped with aging Soviet weapons of the World War II type. It is the army of a garrision state, administratively oriented, with virtually no strategic mobility. The greatest strength of the PRC is simply that no nation, including the Soviet Union, would want to get bogged down trying to conquer and occupy it. It is strategically indigestible—a situation the United States cannot do anything to affect one way or another.

It is often glibly said by American leaders that the PRC "ties down" some 50 divisions along the Sino-Soviet border. Nearly half of those divisions were deployed before 1969. They were minimum force for the protection of the crucial Trans-Siberian railway link to the many vital military-industrial installations in Siberia and the Pacific maritime provinces, as well as for garrisons in Petropavlovsk, Komsomolsk, Khabarovsk and Vladivostok. The whole force of double that size now present is a strategic commitment to the infrastructure of regional defense and power projection in the Northwest Pacific. While the United States opening to the PRC in the 1970s may have precipitated the strengthening of Soviet troops

in the vast reaches of East Asia, the buildup was aimed less at China than at American military forces in the Pacific, Japan and Korea.

American flirtation with the concept of military cooperation with the PRC has ironically spurred the U.S.S.R. to strengthen its strategic forces throughout Asia. Since 1978 Moscow has moved SS-20 missiles and Backfire bombers into the region, established naval and air bases in Vietnam, and deployed more and newer naval vessels to the West Pacific to challenge U.S. control of the seas in the Pacific and Indian Oceans.

Americans are the strategic losers from shifts in the military force balance as a result of calling up the specter of a quasi-alliance with the PRC against the U.S.S.R. The losses will be even greater if the PRC should gobble up the advanced technology and industrial resources of Taiwan, where the per-capita GNP was $2,720 in 1981 and growing.

We may hope that the PRC eventually will gain stability and security in a political frame of reference less hostile to the United States and U.S. allies. It is crucial for now, however, to base American strategy on reality, not hope.

Chinese leaders have consistently and insistently said the PRC does not want to be an ally of the United States. In the light of statements at the 12th Communist Party Congress in Peking in early September 1982, it appears all recent Chinese diplomatic moves have been calculated to put Peking midway between Washington and Moscow while reasserting the PRC claim to revolutionary leadership of the Third World against the two superpowers.

Looking farther into the future, the PRC and the U.S.S.R. are entirely capable of forming an expedient coalition at the expense of the United States and its allies. Dictatorships do not have to worry about electorates in making sudden policy shifts. They cooperated in Vietnam despite basic mutual antagonisms, as Stalin and Hitler did at a terrible cost to West Europe at the beginning of World War II. Beyond that, in the very long run, if a totalitarian China, a land power of continental size, eventually becomes truly modernized, as the leaders of the 12th Party Congress claim it will, it is likely because of its vast, expendable population to replace the Soviet Union as the principal threat to the United States, just as the Soviet Union replaced Germany after 1945.

The United States ought to hew to the line of securing the sea approaches to the non-communist nations along the periphery of Asia with whom we have common economic, political and security interests. Quite apart from their geostrategic positions, these states constitute a remarkable area of economic growth and prosperity within the international trading system. Closer U.S. relations with them will balance off setbacks in other regions such as the Persian Gulf, Iran and Afghanistan. An oceans security system of insular and peninsular states in the West Pacific, including Taiwan, not a continental alliance, is the better part of strategic wisdom.

THE EQUAL RIGHTS AMENDMENT

Mr. TSONGAS. Mr. President, I ask unanimous consent that the following letters of support for the equal rights amendment be printed at this point in the RECORD.

First. The League of Women Voters of Massachusetts.

Second. The League of Women Voters of the United States.

Third. B'nai B'rith Women.

Fourth. The National Women's Conference Committee.

Fifth. Bakery, Confectionery and Tobacco Workers' International Union.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Mailgram]

BOSTON, MASS., *January 25, 1983.*

Senator PAUL TSONGAS,
Russell Office Building,
Washington, D.C.

DEAR SENATOR TSONGAS: We would be pleased to have you include the following statement in the Congressional Record:

The League of Women Voters of Massachusetts strongly supports the reintroduction and passage of the equal rights amendment. Women need the permanent protection against discrimination that only the Federal ERA will provide. As the League of Women Voters of the United States ratification campaign said. "Nothing protects a woman like the ERA".

MARGARET BLISS,
League of Women Voters of Massachusetts.

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES,
Washington, D.C., January 24, 1983.

Hon. PAUL TSONGAS,
U.S. Senate, Washington, D.C.

DEAR SENATOR TSONGAS: The League of Women Voters of the United States is pleased to join with you and the other cosponsors of S.J. Res 213 in rededicating our efforts to the achievement of a basic Constitutional guarantee of equal rights under the law, regardless of sex.

The League of Women Voters has supported the Equal Rights Amendment since 1972 and League members have worked long and diligently for the Amendment since that time. The League will continue this work with the same dedication and conviction in the future as we have in the past and look forward to working with you and your colleagues in the House and Senate. Together we will be successful.

Sincerely,

DOROTHY S. RIDINGS,
President.

B'NAI B'RITH WOMEN,
Washington, D.C., January 18, 1983.

Hon. PAUL E. TSONGAS,
U.S. Senate, Washington, D.C.

DEAR SENATOR TSONGAS: On behalf of the 120,000 members of B'nai B'rith Women, I want to commend you for sponsoring—once again—a bill to amend the Constitution to grant women equality of rights under the law. The members of B'nai B'rith Women have long supported ERA and I have every expectation that we shall continue that support until the measure finally passes.

At the last meeting of our executive board the following resolution was passed unanimously:

"B'nai B'rith Women, as the first Jewish women's organization to support passage of the equal rights amendment, will continue to work to ensure fair and equal treatment for women in all areas of life. As part of the effort, B'nai B'rith Women will seek to educate the public about the impact of existing discriminatory law and practices and will join with others of like views to take effective action to further the cause of women and secure their full equality under law."

On behalf of our entire membership, I thank you again for your efforts on behalf of ERA.

Sincerely,

DOROTHY BINSTOCK,
President.

THE NATIONAL WOMEN'S CONFERENCE COMMITTEE,
January 21, 1983.

Hon. PAUL TSONGAS,
U.S. Senate, Washington, D.C.

DEAR SENATOR TSONGAS: On behalf of the National Women's Conference Committee ERA Task Force, I want to commend you for your stalwart support of constitutional equality for American women.

We appreciate your participation in our press conference in the Senate building on July 1 last year and we want to assure you of our enthusiastic support this year as you prepare to reintroduce the Equal Rights Amendment in the Senate next week on January 25th.

Please let NWCC Co-Chair Carmen Delgado Votaw (address and telephone number above) know whenever we may be of any assistance to you in your efforts to achieve passage of the proposed 27th Amendment to the U.S. Constitution.

Sincerely,

ALLIE CORBIN HIXSON, Ph. D.,
Chair, NWCC Task Force for ERA.

BAKERY, CONFECTIONERY AND TOBACCO WORKERS INTERNATIONAL UNION,
Kensington, Md., January 24, 1983.

Ms. CHRISTINE NAYLOR,
Care of Senator Paul Tsongas, Russell Senate Office Building, Washington, D.C.

DEAR MS. NAYLOR: At the request of the Labor Committee for ERA, I called your office on Friday, January 21 and informed them that we would like to sign on as a supporter of the bill that Senator Tsongas is introducing on Tuesday on the ERA.

For your information, attached are our 1978 and 1982 Convention resolutions in support of the ERA.

Very truly yours,

CAROLYN J. JACOBSON,
Director of Public Relations.

ERA

Whereas, Ratification of the Equal Rights Amendment is of critical importance to millions of Americans, especially working women; and

Whereas, This Amendment would insure, once and for all, the recognition by the American People that equality under the law is a basic freedom which cannot, and must not be abrogated because of one's sex; and

Whereas, The Equal Rights Amendment has been endorsed by the AFL-CIO and most of its affiliate unions; and

Whereas, 35 states to date have ratified the ERA and the ratification by three more states is necessary by March 1979; and

Whereas, the ERA is being used as a rallying issue by the far right to build an organization apparatus to oppose pro-labor causes; and

Whereas, These opposition forces are attempting to rescind the ERA in many of the

already ratified states, even though the constitutionality of these recession efforts is highly questionable, and

Whereas, The recent Supreme Court decision in *Gilbert* v. *General Electric*—which ruled that discrimination on the basis of pregnancy was not discrimination on the basis of sex—threatens the progress women have made towards equality in the past few years, and pinpoints the fact that there is a need for the ERA in addition to the Equal Pay Act, Civil Rights Act and other legislation; and

Whereas, Adoption of the Equal Rights Amendment would be a giant step towards achieving equality for all, a principle fundamental to the labor movement, spelled out in its Constitutions, fought for in its contracts and carried out in its policies and programs;

Therefore be it Resolved, That the 30th Constitutional Convention of the Bakery and Confectionery Workers' International Union

(1) Go on record in support of the Equal Rights Amendment; and

(2) That the votes of state legislators on their stand on ERA be carefully scrutinized and used as one of the principle criteria for endorsement and political support by the International Union and its local unions; and

(3) That the International and its local unions take affirmative steps to publicize our position on ERA through all available means; and

(4) That the International cooperate with ERAmerica, the Labor Committee for ERA and with other groups supporting ERA where appropriate: and

Be it Further Resolved, That the International goes on record urging Congress to grant an extension of time for ERA to be ratified to provide ample opportunity to present the facts to the public and the state legislators.

Referred to Resolutions Committee.

CONTINUING SUPPORT FOR THE EQUAL RIGHTS AMENDMENT

Whereas, Women make up 51.4 percent of the population of the United States, yet the Supreme Court over the years has refused to interpret the Constitution in such a manner as to insure their equality under the laws of the United States; and

Whereas, Current laws that Congress has enacted to further women's economic equality can be repealed at any time without the ERA's Constitutional guarantees; and

Whereas, Ratification of the ERA is of critical importance to millions of Americans, particularly working women who still are subject to employment discrimination and exploitation despite court decisions and legislation outlawing such discrimination on the basis of sex; and

Whereas, Unions, through the collective bargaining process and the grievance procedure, have made outstanding gains in securing sexual equality in organized work sites, yet only 15 percent of all women workers are organized; and

Whereas, ERA is an economic issue. Current economic conditions have made its passage even more critical than it was in 1972, when Congress passed it. A woman still earns 59 cents for every dollar a man earns. Three out of every five persons with incomes below the poverty level are women; and

Whereas, The ERA continues to be used as a rallying issue by the far right even though recent polls (Time Magazine, NBC-Associated Press) have shown that the Amendment is supported by a majority of the American electorate; and

Whereas, The Bakery, Confectionery and Tobacco Workers International Union, along with the AFL-CIO and its other affiliates, have long been supporters of this Amendment as a means to once and for all, insure the recognition by the American people that equality under the law is a basic freedom which cannot, and must not, be abrogated because of one's sex;

Therefore Be It Resolved, that the Bakery, Confectionery and Tobacco Workers International Union will work to secure the passage of the Equal Rights Amendment which has been reintroduced in Congress and will renew its fight for ratification in the 38 states needed to make equal rights a permanent part of the U.S. Constitution.

Referred to Resolutions Committee.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

BUDGET RESCISSIONS AND DEFERRALS—MESSAGE FROM THE PRESIDENT—PM 5

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred, pursuant to the order of January 30, 1975, jointly to the Committee on the Budget, the Committee on Appropriations, the Committee on Labor and Human Resources, the Committee on Banking, Housing and Urban Affairs, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Energy and Natural Resources, the Committee on Commerce, Science, and Transportation, the Committee on Foreign Relations, the Committee on Armed Services, the Committee on the Judiciary, and the Committee on Small Business:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report nineteen rescission proposals of fiscal year 1983 funds totaling $1,552.0 million.

In addition, I am reporting revisions to nine existing deferrals increasing the amount deferred by $3,155.7 million, as well as thirty new deferrals of funds totaling $6,795.9 million.

The rescission proposals affect Appalachian Regional Development programs, programs in the Department of Agriculture, Education Activities, the Departments of Housing and Urban Development, Interior, and Transportation, as well as the Corporation for Public Broadcasting and an off-budget entity in the Department of Agriculture.

The deferrals affect Appalachian Regional Development programs, International Security Assistance programs, and programs in the Departments of Agriculture, Commerce, Defense, Energy Activities, and the Departments of Health and Human Services, Housing and Urban Development, Interior, Justice, State, and Transportation, as well as the Railroad Retirement Board, Small Business Administration, Motor Carrier Ratemaking Study Commission, Tennessee Valley Authority, the United States Information Agency, and the United States Railway Association.

The details of each rescission proposal and deferral are contained in the attached reports.

RONALD REAGAN.

THE WHITE HOUSE, *February 1, 1983.*

REPORT OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES SUBMITTED DURING THE RECESS

Under the authority of the order of January 31, 1983, the following report was submitted on January 31, 1983, during the recess of the Senate:

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment:

S. 271. A bill to amend the National Trails System Act by designating additional national scenic and historic trails, and for other purposes. (Rept. No. 98-1.)

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PERCY, from the Committee on Foreign Relations, without amendment:

S. Res. 39. An original resolution authorizing expenditures by the Committee on Foreign Relations; referred to the Committee on Rules and Administration.

By Mr. HATFIELD, from the Committee on Appropriations, without amendment:

S. Res. 41. An original resolution authorizing expenditures by the Committee on Appropriations; referred to the Committee on Rules and Administration.

By Mr. SIMPSON, from the Committee on Veterans' Affairs, without amendment:

S. Res. 42. An original resolution authorizing expenditures by the Committee on Veterans' Affairs; referred to the Committee on Rules and Administration.

NOTE

The following original resolutions were reported on Friday, January 28, 1983, during the recess of the Senate, under the authority of the order of the Senate of Thursday, January 27, 1983:

SENATE RESOLUTION 25—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON THE BUDGET

Mr. DOMENICI, from the Committee on the Budget, reported the fol-

lowing resolution; which was referred to the Committee on Rules and Administration:

S. RES. 25

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraph 1 of rule XXVI of the Standing Rules of the Senate, the Committee on the Budget is authorized from March 1, 1983, through February 29, 1984, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $3,085,062, of which amount not to exceed $50,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 29, 1984.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SENATE RESOLUTION 26—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 26

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Commerce, Science, and Transportation is authorized from March 1, 1983, through February 29, 1984, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $3,630,169, of which amount (1) not to exceed $20,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $8,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 29, 1984.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DENTON (for himself, Mr. HEFLIN, and Mr. HUDDLESTON):

S. 312. A bill to change the name of the Talladega National Forest in Alabama to the "Bear Bryant National Forest;" considered and passed.

By Mr. SPECTER:

S. 313. A bill to authorize housing assistance to avert foreclosures; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. GOLDWATER:

S. 314. A bill to encourage in-flight emergency care aboard aircraft by requiring the placement of emergency equipment, supplies, and drugs aboard aircraft and by relieving appropriate persons of liability for the provision and use of such emergency equipment, supplies, and drugs; to the Committee on Commerce, Science, and Transportation.

By Mr. HEFLIN:

S. 315. A bill to create a program to combat violent crime in the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. BYRD (for Mr. INOUYE):

S. 316. A bill for the relief of Mrs. Lolita Vicente Calaro; to the Committee on the Judiciary.

S. 317. A bill for the relief of Mrs. Ting Ping Cheung-Yeh; to the Committee on the Judiciary.

S. 318. A bill for the relief of Mrs. Araceli Gushiken; to the Committee on the Judiciary.

S. 319. A bill for the relief of John K. Karaya, Mary W. Karaya, Martin M. Z. Karaya, Peter D. Karaya, and Andrew M. Karaya; to the Committee on the Judiciary.

S. 320. A bill for the relief of Victor Wu-Hsiung Kaw, Shu-Yung Gloria Kaw, and Pei-San Kaw; to the Committee on the Judiciary.

S. 321. A bill for the relief of Alfredo M. Maglinao; to the Committee on the Judiciary.

S. 322. A bill for the relief of Doctors Benjamin C. and Paulita M. Mahilum; to the Committee on the Judiciary.

S. 323. A bill for the relief of Mr. Andres B. Pasion; to the Committee on the Judiciary.

S. 324. A bill for the relief of Ms. Kinisimere Fonua Suschnigg; to the Committee on the Judiciary.

S. 325. A bill for the relief of Joseph Y. Quijano; wife, Marichu Larrazabal Quijano; sons, Franz Joseph Quijano and Felix Ray L. Quijano; and daughter, Maria Estrella Quijano; to the Committee on the Judiciary.

S. 326. A bill for the relief of Arron P. K. Yung; to the Committee on the judiciary.

S. 327. A bill for the relief of Mr. Faalili Afele, Mrs. Liugalua Afele and Ms. Siliolo Afele; to the Committee on the Judiciary.

S. 328. A bill for the relief of Ms. Saturnina V. Bonifacio; to the Committee on the Judiciary.

By Mr. GRASSLEY:

S. 329. A bill to authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities; to the Committee on Governmental Affairs.

By Mr. D'AMATO:

S. 330. A bill to amend section 103(b)(3) of the Internal Revenue Code; to the Committee on Finance.

By Mr. BYRD:

S. 331. A bill to create a National Investment Corporation; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SASSER (for himself and Mr. BAKER):

S. 332. A bill for the relief of John Smitherman; to the Committee on the Judiciary.

By Mr. METZENBAUM (for himself and Mr. KENNEDY):

S. 333. A bill to amend title 11 of the United States Code to make certain changes in the personal bankruptcy law, and for other purposes; to the Committee on the Judiciary.

By Mr. MATTINGLY:

S. 334. A bill to amend the Internal Revenue Code of 1954 to repeal the withholding of tax on interest and dividends and to increase the penalty for failing to supply taxpayer identification numbers on returns and statements; to the Committee on Finance.

By Mr. COHEN:

S. 335. A bill to provide for an increase in pay for members of the uniformed services in certain enlisted pay grades; to the Committee on Armed Services.

By Mr. NUNN (for himself, Mr. RUDMAN, Mr. CHILES, Mr. NICKLES, Mr. HATCH, Mr. ROTH, Mr. KENNEDY, Mr. DECONCINI, Mr. STENNIS, Mr. JOHNSTON, Mr. PRYOR, Mr. HOLLINGS, and Mr. EAST):

S. 336. A bill to increase the penalties for violations of the Taft-Hartley Act, to prohibit persons, upon their convictions of certain crimes, from holding offices in or certain positions related to labor organizations and employee benefit plans, and to clarify certain responsibilities of the Department of Labor; to the Committee on Labor and Human Resources.

By Mr. PACKWOOD (for himself, Mr. MOYNIHAN, Mr. DURENBERGER, and Mr. HEINZ):

S. 337. A bill to amend the Internal Revenue Code of 1954 to make permanent the deduction for charitable contributions by nonitemizers; to the Committee on Finance.

By Mr. COHEN (for himself, Mr. ROTH, Mr. LEVIN, Mr. RUDMAN, Mr. PERCY, Mr. DURENBERGER, Mr. PRYOR, Mr. PROXMIRE, Mr. HEINZ, and Mr. MITCHELL):

S. 338. A bill to revise the procedures for soliciting and evaluating bids and proposals for Government contracts and awarding such contracts, and for other purposes; to the Committee on Governmental Affairs.

By Mr. PROXMIRE:

S. 339. A bill to amend title IV of the Social Security Act to provide that States must require recipients of aid to families

with dependent children to participate in community work experience programs if they are able to do so; to the Committee on Finance.

By Mr. MURKOWSKI:

S. 340. A bill for the acquisition by the United States by exchange of certain native owned lands or interests in lands in Alaska; to the Committee on Energy and Natural Resources.

By Mr. RUDMAN:

S. 341. A bill for the relief of Nesca Nicolas, Patricia Nicolas, and Bernard Nicolas; to the Committee on the Judiciary.

By Mr. DODD:

S. 342. A bill to amend title II of the Social Security Act to require that the annual reports of the trustees of the Federal old-age and survivors insurance, disability insurance, and hospital insurance trust funds include an opinion by the Chief Actuary of the Social Security Administration with respect to the methodologies and assumptions used in preparing such annual reports; to the Committee on Finance.

By Mr. BOSCHWITZ (for himself, Mr. JEPSEN, Mr. DURENBERGER, Mr. BOREN, Mr. HUDDLESTON, Mr. GRASSLEY, Mr. SYMMS, Mr. THURMOND, Mr. DECONCINI, Mr. PRESSLER, Mr. EAST, Mr. BAUCUS, Mr. KASTEN, and Mr. D'AMATO):

S. 343. A bill to amend the Internal Revenue Code of 1954 to reduce the heavy vehicle use tax; to the Committee on Finance.

By Mr. BOSCHWITZ:

S. 344. A bill for the relief of Dr. Ching Hon Pui; to the Committee on the Judiciary.

By Mr. HEFLIN:

S. 345. A bill to establish a national historic park at AfricaTown, U.S.A. (Prichard, and Mobile), Ala.; to the Committee on Energy and Natural Resources.

By Mr. DODD (for himself, Mr. RANDOLPH, and Mr. CHAFEE):

S. 346. A bill to amend the Solid Waste Disposal Act to assure protection of public health and environmental safety in the Environmental Protection Agency's regulations for the delisting of hazardous wastes, and to require the Environmental Protection Agency to establish a timetable for adding additional hazardous wastes to those regulated under such act; to the Committee on Environment and Public Works.

By Mr. MATSUNAGA:

S. 347. A bill for the relief of Siegfried Hans Ehrmann; to the Committee on the Judiciary.

S. 348. A bill for the relief of Feliciana Usita Barroga; to the Committee on the Judiciary.

S. 349. A bill for the relief of Duk Chan Byun, his wife Yung Ja Byun, and his children Hye Ja Byun, Hye Sun Byun, Hye Ryung Byun, and Yung Eun Byun; to the Committee on the Judiciary.

S. 350. A bill for the relief of George A. Albert; to the Committee on the Judiciary.

S. 351. A bill for the relief of Rogelio Baldos Valle Tabaco; to the Committee on the Judiciary.

S. 352. A bill for the relief of Julieta Rabara Rasay; to the Committee on the Judiciary.

S. 353. A bill for the relief of Cirilo Raagas Costa and Wilma Raagas Costa; to the Committee on the Judiciary.

S. 354. A bill for the relief of Peter M. Jordan and Donna R. Jordan, husband and wife, and their children Laurelee Ruth Jordan, Julianne Margaret Jordan, Jayne Michell Jordan, and Peter Andrew Jordan; to the Committee on the Judiciary.

S. 355. A bill for the relief of Wen Hwei Hsu; to the Committee on the Judiciary.

S. 356. A bill for the relief of Da Ying Huang and Shao Lan Huang, husband and wife, and their child, Si Jing Huang; to the Committee on the Judiciary.

S. 357. A bill for the relief of Micaela Agno Rasay; to the Committee on the Judiciary.

S. 358. A bill for the relief of Keiko Ota; to the Committee on the Judiciary.

S. 359. A bill for the relief of Yue Chung Chiu; to the Committee on the Judiciary.

S. 360. A bill for the relief of Amadeo Senbrano Timbol, his wife Hannah Apla Sangkula Timbol, his son Abel Sangkula Timbol, and his daughter Schiraliz Sangkula Timbol; to the Committee on the Judiciary.

S. 361. A bill for the relief of Goldhorn Cheng, Cheng-Hwa Lee Cheng, Shih-Chuang Cheng, Shih-Huang Cheng, and Shih-Kang Cheng; to the Committee on the Judiciary.

S. 362. A bill for the relief of Raymond W. Milling; to the Committee on Governmental Affairs.

S. 363. A bill for the relief of Clayton Timothy Boyle and Clayton Louis Boyle, son and father; to the Committee on the Judiciary.

S. 364. A bill for the relief of Dr. Samuel J. Wong and Mrs. Agnes J. Wong, husband and wife; to the Committee on the Judiciary.

By Mr. HATFIELD:

S. 365. A bill entitled "The Department of Defense Civilian Air Traffic Controllers Act of 1983"; to the Committee on Governmental Affairs.

By Mr. DODD (for himself and Mr. WEICKER):

S. 366. A bill to settle certain claims of the Mashantucket Pequot Indians; to the Select Committee on Indian Affairs.

By Mr. PERCY:

S. 367. A bill for the relief of Mrs. Spyros Agriopoulos; to the Committee on the Judiciary.

By Mr. MATHIAS:

S. 368. A bill to amend section 234 of the National Housing Act to permit shared equity condominium mortgages; to the Committee on Banking, Housing, and Urban Affairs.

S. 369. A bill for the relief of certain Government physicians who were paid basic pay, performance awards, and physicians comparability allowances in aggregate amounts exceeding the limitation set forth in section 5383(b) of title 5, United States Code; to the Committee on Governmental Affairs.

By Mr. PERCY (for himself and Mr. DIXON):

S. 370. A bill entitled the "Imported Liquified Natural Gas Policy Act of 1983; to the Committee on Energy and Natural Resources.

By Mr. SASSER (for himself, Mr. NUNN, Mr. LEVIN, Mr. JOHNSTON, and Mr. PRESSLER):

S. 371. A bill to amend the Internal Revenue Code of 1954 to provide for a credit against tax with respect to the employment of certain unemployed individuals; to the Committee on Finance.

By Mr. HATFIELD (for himself, Mr. PACKWOOD, and Mr. Hollings):

S. 372. A bill to promote interstate commerce by prohibiting discrimination in the writing and selling of insurance contracts, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MURKOWSKI (for himself, Mr. STEVENS, Mr. JACKSON, and Mr. GORTON):

S. 373. A bill to provide comprehensive national policy dealing with national needs and objectives in the Arctic; to the Committee on Governmental Affairs.

By Mr. DIXON:

S.J. Res. 26. A joint resolution proposing an amendment to the Constitution authorizing the President to disapprove or reduce an item of appropriations; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. PERCY:

S. Res. 39. An original resolution authorizing expenditures by the Committee on Foreign Relations; from the Committee on Foreign Relations; to the Committee on Rules and Administration.

By Mr. GRASSLEY (for himself, Mr. SYMMS, Mr. JEPSEN, Mr. BOREN, and Mr. HATCH):

S. Res. 40. A resolution to express the sense of the Senate urging Presidential action in calling for an immediate domestic economic and trade summit to address the U.S. long-term trade policy by a bipartisan group of individuals from the Government, business, labor, agriculture, and the academic community; to the Committee on Finance.

By Mr. HATFIELD:

S. Res. 41. An original resolution authorizing expenditures by the Committee on Appropriations; from the Committee on Appropriations; to the Committee on Rules and Administration.

By Mr. SIMPSON:

S. Res. 42. An original resolution authorizing expenditures by the committee on Veterans' Affairs; from the Committee on Veterans Affairs; to the Committee on Rules and Administration.

By Mr. BAKER:

S. Con. Res. 8. A concurrent resolution to provide for an adjournment of the Senate for more than 3 days; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DENTON (for himself, Mr. HEFLIN, and Mr. HUDDLESTON):

S. 312. A bill to change the name of the Talladega National Forest in Alabama to the Bear Bryant National Forest; considered and passed.

(The remarks of Mr. DENTON and Mr. HEFLIN on this legislation appear earlier in today's RECORD.)

By Mr. SPECTER:

S. 313. A bill to authorize housing assistance to avert foreclosures; to the Committee on Banking, Housing, and Urban Affairs.

(The remarks of Mr. SPECTER on this legislation appear earlier in today's RECORD.)

By Mr. GOLDWATER:

S. 314. A bill to encourage in-flight emergency care aboard aircraft by re-

quiring the placement of emergency equipment, supplies, and drugs aboard aircraft and by relieving appropriate persons of liability for the provision and use of such emergency equipment, supplies, and drugs; to the Committee on Commerce, Science, and Transportation.

IN-FLIGHT MEDICAL EMERGENCIES ACT

Mr. GOLDWATER. Mr. President, I send to the desk a bill designed to encourage in-flight emergency care aboard aircraft by requiring the placement of emergency equipment, supplies, and drugs aboard aircraft, and by relieving appropriate persons of liability for the provision and use of such emergency equipment, supplies, and drugs. This bill, if enacted, will be cited as the In-flight Medical Emergencies Act.

Mr. President, what does this bill do? In the simplest terms, this bill would order the Federal Aviation Administration to require medical emergency kits aboard commercial aircraft within 180 days. The bill would give immunity to doctors and others who attempt to treat emergency victims and, finally, the bill would give the airlines immunity for carrying and providing the emergency kits, and immunity for the actions of those treating the victims.

The reason for introduction of this legislation is simple. The current kit carried aboard commercial aircraft for treatment of medical injuries is laughable. That kit, which is nothing more than a first aid kit, was derived from a Johnson & Johnson in-flight kit put together in 1924, that is on display in the Smithsonian Air and Space Museum. Many times, on my flights around this Nation of ours, I have been unable to even confirm that such a kit was on board. However, as extracted from the Federal Air Regulations, the contents are supposed to be: 16 small adhesive bandage compresses, 20; antiseptic swabs, 10; ammonia inhalants, 8; medium bandage compresses, 5; triangular bandage compresses, 6 small portions of burn compound or other burn remedy, 1 arm splint, 1 leg splint, 4 roller bandages, 2 1-inch rolls of adhesive tape, and 1 set of bandage scissors. Mr. President, I submit to you that such a kit would be barely minimal for a troop of Boy Scouts. We need a medical kit which can be used by qualified physicians or other medical personnel to deal with medical emergencies aboard our commercial carriers.

This is not a new issue. On May 20 of 1982, the Subcommittee on Aviation of the Senate Commerce Committee held a hearing to discuss this issue. Testimony was received by a Federal Aviation Administration official, from representives of the Aviation Consumer Action Project, from two distinguished surgeons, from the Air Transport Association, and from representatives of two of the major air carriers. There is also some previous legislative history in that Senate bill S. 3036 was introduced in the 2d session of the 96th Congress. That bill was designed to encourage on-the-scene emergency care aboard aircraft by relieving licensed medical personnel and air carrier employees from civil liability for damages resulting from any act or omission in rendering such care. Also, in 1981, the Aviation Consumer Action Project and Public Citizen Health Research Group filed a petition asking the FAA to require airlines to carry emergency medical kits for use by physicians who would come forward in an emergency. That petition, I am sorry to say, was denied by the FAA. Last year, these groups, joined by Dr. Eve Bargmann and other physicians, filed a petition for review of the FAA decision in the U.S. Court of Appeals for the District of Columbia. A final decision is yet to be handed down on that particular suit.

What is the likely outcome of this ongoing law suit? It is fairly predictable. The FAA has continually beat around the bush on this issue. Perhaps it is true, although this has been questioned, that their statutory authority does not extend into this area because medical incidents aboard commercial airliners are frequently not aviation induced, but simply happen to occur during a period the individual is aboard a commercial airliner. The airlines argue, in general terms, that no data base has been formed which would indicate a requirement for these kits. The airlines sometimes define a medical emergency as one which requires an emergency landing. In many cases when medical emergencies have occurred, the destination, as originally planned, is the best place for the landing. The airlines know this as well. The FA also stresses the minimum number of incidents which are reported to the FAA as medical emergencies. Any of us who have been around aviation for many years, and I have been around aviation for most of its years, can tell you that a lot of things do not get reported to the FAA simply because they should have been. Thus far, I consider both these arguments less than formidable. The fact is that many commercial carriers in other countries carry a medical kit. Air Canada, just last year, decided to equip its entire fleet of aircraft with medical kits designed for the exclusive use of doctors in the event of emergency situations during a flight. The Director of Medical Services for Air Canada, Dr. Robert Anderson, stated that there is no evidence to suggest that medical emergencies are more likely to occur onboard an airplane than in any situation involving such groups of people. He went on to say that the Air Canada initiative stems from their experiences which showed that there is a physican onboard an aircraft in over 90 percent of the cases where the life of a patient is in danger. Under those circumstances, Air Canada felt it very reasonable to make available the tools required to deal effectively with such emergencies as heart related problems, asthma, and diabetes. The list of airlines which carry medical kits include El Al, SAS, Air France, Alitalia, Iberia, Lufthansa, Sabena, British Air, KLM, and Swissair.

Mr. President, the time has come to stop beating around the bush. No complex research is required and there is no need for further studies. It is time to get on with it. For an estimated cost of less than $250 per kit, a problem can be solved, and the solution is long overdue. The legislation which I have introduced today will not only result in the carriage of adequate medical supplies aboard aircraft, but it will also offer protection to those qualified medical personnel who step forward to assist in the event of a medical emergency. This latter, Good Samaritan provision can be useful, even though adequate supplies are not aboard an aircraft, because many medical personnel have elected to carry kits of their own when traveling.

Action is long overdue. I urge my colleagues to join me in cosponsoring this legislation as soon as possible and I will be urging the chairman of the Aviation Subcommittee of Commerce, Senator KASSEBAUM, toward early consideration of this legislation in our committee.

By Mr. HEFLIN:

S. 315. A bill to create a program to combat violent crime in the United States, and for other purposes; to the Committee on the Judiciary.

NATIONAL WAR ON VIOLENT CRIME ACT

Mr. HEFLIN. Mr. President, when I arrived in the Senate in 1979, I vowed to make a national assault on violent crime and crime-fighting aid to our States, our No. 1 priority, after a solution to our Nation's economic problems. I wholeheartedly supported the package passed by the 97th Congress as an initial beginning of our national war on violent crime. I looked forward to the implementation of this compromise package, and had hoped it would pave the way for comprehensive criminal law reform in the 98th Congress. However, because of one item the package was pocket-vetoed.

The statistics speak for themselves. In my home State of Alabama, 18,423 violent crimes were committed in 1981 alone. Nationwide, in 1981, one violent crime was committed every 24 seconds, and one murder was committed every 23 minutes.

I, for one, cannot stand aside while our citizens live behind locked doors in constant fear for their safety. I cannot ignore my obligation to fight for an end to the criminal tyranny flourishing even in our rural areas and suburbs.

I rise again to introduce the National War on Violent Crime Act to send a clear message to the criminal element in our society that its reign of terror will no longer be tolerated by the American people.

My package will first provide for an overall coordinated Federal program to assist State and local governments in combating crime. It would establish a Violent Crime Administration within the Department of Justice to encourage the improvement of State and local criminal justice systems through technical and financial support. It would also establish a National Police Academy to provide high-level training for State and local police officers.

Second, my proposal will give bite to some weak areas in our Federal criminal law. It will modify our Federal bail laws so a judge can deny bail to defendants determined to be dangerous to society. It will establish an additional 5-year sentence for the use of a handgun or any firearm in the commission of a felony. It reforms our Federal sentencing laws by mandating a life sentence without parole for career criminals convicted of their third violent felony.

Through two provisions, my bill will tighten our drug laws. The pharmacy theft provision will make the robbery of any dollar amount of a controlled substance from a drug store a Federal crime. The antitampering provision, aimed at such atrocities as the Chicago Tylenol murders, will make the malicious tampering with foods, drugs, or cosmetics a felony.

My bill finally addresses the number of widespread incidents of vandalism, sabotage, and threats against energy facilities. In one plant alone, in Minnesota, some 10,000 insulators were shot out and over 15 towers toppled. The total cost of damage was over $7 million, a figure which ultimately translates into higher electric rates for both industry and consumer. It is high time that this vandalism and sabotage be stopped, and the offenders punished at the Federal level. My bill makes it a Federal offense, punishable by a fine of not more than $50,000 or imprisonment of not more than 10 years, or both, for the knowing and willful damage of the property of an energy facility in an amount that exceeds $5,000. It is crucial that our Nation's industries, businesses, hospitals, and homes have an uninterrupted source of power.

In sum, Mr. President, the National War on Violent Crime Act will directly wage battle against the crime epidemic which has spread fear in every city, county, and State across our Nation. I am firmly convinced that if we are to be successful in this effort, we must get law enforcement assistance to the local level, and my bill insures our States this support. Moreover this legislation strengthens our Federal criminal law in areas critical to the safety of the public. I urge my colleagues support in the 98th Congress for this much needed measure.

Thank you, Mr. President.

By Mr. GRASSLEY:

S. 329. A bill to authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities; to the Committee on Governmental Affairs.

STATE CORRECTIONS ASSISTANCE ACT

● Mr. GRASSLEY. Mr. President, I am reintroducing this bill, which passed the Senate last year, with the aim of lessening the burden that States face as their prison populations grow. This measure, which embodies one of the recommendations of the President's Task Force on Violent Crime, amends the Federal Property and Administrative Services Act of 1949 to authorize donations of surplus Federal real property to States and localities for construction and modernization of prisons.

Prison overcrowding is a problem that we cannot ignore. Between 1978 and 1981, the number of State prisoners increased from 268,189 to 329,122. As of September 1982, that number is a staggering 405,372 according to Bureau of Justice statistics. So State systems over the past few years have had to accommodate an increase of 137,000 beds.

The problem of overcrowding goes beyond corrections. Potentially it leads to a circumvention of the overall public and criminal justice system's means of dealing with the violent offender in a manner consistent with the gravity of the offense. Probation is meted out instead of incarceration because judges are aware that there is no available prison space. At a time when we are increasingly leaning toward harsher, longer prison sentences, available prison space is indispensable.

Furthermore, as a result of the Supreme Court's ruling in the case of Rhodes against Chapman, two inmates may be housed in a single cell. In the interest of humanity, this bill would make correctional institutions more conducive to rehabilitation instead of creating prisoner warehouses. It has been argued that this additional exception will deplete Federal property resources. That may be true; nevertheless, it is critically needed.

Under the provisions of my bill, I believe that a more streamlined process will minimize response times between the Federal, State, and local governments, utilize existing real property expertise in GSA as well as the correctional expertise in the Department of Justice, and minimize compliance restrictions on State and local governments.

It is no secret that States are currently faced with the question of how to eliminate overcrowding in prisons so as to fashion programs that rise to constitutionally acceptable levels of legality and humanity. Society cannot permit crime to go unpunished for want of prison space, and for the present, prison is the only sanction available for violent crime. A revolutionary breakthrough in the range of available rehabilitative sanctions is not on the horizon. Mr. President, I urge all of my Senate colleagues to support this legislation.●

By Mr. D'AMATO:

S. 330. A bill to amend section 103(b)(3) of the Internal Revenue Code; to the Committee on Finance.

AMENDMENT OF INTERNAL REVENUE CODE

● Mr. D'AMATO. Mr. President, I am today introducing a bill which would permit the New York State Power Authority to fulfill its statutory mission of bringing the benefits of lower cost power and energy from its generating facilities to people throughout the State of New York. It is now seriously impeded from doing so by Federal regulations promulgated under section 103(b)(3) of the Internal Revenue Code.

Unlike virtually every other public utility agency in the United States, the Power Authority of the State of New York—which has been in existence for nearly five decades—owns no distribution facilities of its own. Therefore, it is forced to market the output of its facilities through the various public and private utility companies in the State for delivery to the ultimate consumers. The State's 7 private utility companies serve more than 95 percent of the electric load in New York.

Industrial development bond (IDB) restrictions, however, treat sales to such utility companies for delivery to the ultimate consumers as sales to "nonexempt persons," even though the power sold to these utility companies is delivered to the ultimate consumers with no markup on the purchase price. Under present law, a maximum of 25 percent of the output generated by facilities financed with tax-exempt bonds may be sold to "nonexempt persons". Consequently, the power authority's ability to market the output of its facilities to the vast majority of the electrical consumers in New York State has been substantially frustrated.

The bill I am introducing today would require that the State's private utility companies be treated as "exempt persons" under the Internal

Revenue Code solely for the very limited purpose of remarketing, without markup or profit, their purchases of the output and their use of the generating facilities owned and financed by the Power Authority of the State of New York. By virtue of such authority ownership and financing, no investment tax credits or accelerated depreciation benefits would be available to any private person or company using the output of these facilities.

The New York State Power Authority is different from similar agencies in other States. It is not authorized to own any transmission facilities. It is required to sell its power at wholesale. It is by far the oldest such authority in the Nation and it is actually mandated by a 1957 Federal statute to sell 445,000 kilowatts of hydroelectricity each year to a specific New York utility. While the authority's State charter states that it is "desirable and reasonable" for the authority to sell its power to all of the utilities in the State, this is impossible given current IDB law and regulations.

This bill is essential to insure the maximum benefit to the citizens of New York from the use of the power authority's existing and proposed generating facilities. This bill would permit the authority to make sales of electricity from new and recently built facilities and to continue sales to utilities from the old ones if they should be rebuilt or enlarged. The January 1, 1970, date would assure that uniform rules would apply to the output of all of the authority's facilities.

This bill, which has a negligible effect upon Federal revenues, is vital to my State. It is needed to keep the rates consumers pay for publicly generated power reasonable. I ask unanimous consent that the bill be printed in the RECORD in full at the conclusion of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 330

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Application of section 103(b)(3) to certain entities. For the purposes of section 103(b)(3) of the Internal Revenue Code of 1954 (relating to the definition of "exempt person"), the term "exempt person" shall include a regulated public utility having any customer service area within a State served by a public power authority which was required as a condition of a Federal Power Commission license specified by an Act of Congress enacted prior to the enactment of section 107 of the Revenue and Expenditure Control Act of 1968 (Public Law 90-364) to contract to sell power to one such utility and which is authorized by State law to sell power to other such utilities, but only with respect to the purchase by any such utility and resale to its customers of any output of any electrical generation facility or any portion thereof or any use of any electrical transmission facility or any portion thereof financed by such power authority and owned by it or by such State, and provided that by agreement between such power authority and any such utility there shall be no markup in the resale price charged by such utility of that component of the resale price which represents the price paid by such utility for such output or use.

SEC. 2. The provisions of section 1 hereof shall apply to obligations issued on or after January 1, 1970, to finance any facility or portion thereof referred to in said section.●

By Mr. METZENBAUM (for himself and Mr. KENNEDY):

S. 333. A bill to amend title 11 of the United States Code to make certain changes in the personal bankruptcy law, and for other purposes; to the Committee on the Judiciary.

CONSUMER BANKRUPTCY IMPROVEMENTS ACT OF 1983

● Mr. METZENBAUM. Mr. President, today we in the Senate and Representative RODINO in the House are introducing a bill to make needed substantive changes in our bankruptcy code. The bill is designed to curb debtor abuses without imposing undue burdens on deserving debtors who, overwhelmed with debt and unexpected financial reverses, are forced to turn to the bankruptcy courts for relief.

In 1978, after nearly a decade of studying the bankruptcy code, Congress enacted a major reform of our bankruptcy laws. One of the most important aims of the 1978 act was to protect debtors from abusive tactics used by many creditors. That act has not functioned perfectly. However, given our current economic crisis with unemployment at its highest since the Depression, it is essential that the basic thrust of that act be maintained. Debtors must continue to have adequate protection from creditor overreaching.

Studies show that the vast majority of bankruptcies are filed by blue-collar workers between 25 and 35 years of age, who have suffered unforeseen financial reverses such as loss of job, uninsured illness, or divorce. A case study of bankruptcies in Connecticut done by Prof. Phillip Shuchman of the Rutgers University School of Law showed that the mean annual income for those people filing for bankruptcy in 1979 was $11,744, more than $100 a month below the Bureau of Labor Statistics; lower living budget for the same period. Most of those in the study had unstable incomes: They were employed in marginal jobs, at an hourly wage without steady employment.

In testimony before the House Subcommitee on Monopolies and Commercial Law last year, a representative of the United Auto Workers legal services plan in Newark, N.J., presented a similar profile of the typical bankrupt his organization served. Most were hourly workers who had been laid off or had had their wages frozen and had lost other benefits as the auto industry suffered a depression. Most were one-wage-earner families, so there was no second income to supplement unemployment benefits to support families and to pay debts incurred before the layoffs. Certainly these people deserve the protections afforded them by the 1978 act.

Although the bankruptcy code as amended in 1978 appears to be working effectively in most cases, some adjustments are in order. Creditors must be protected from debtors who are abusing the protections afforded them by the bankruptcy laws. Our bill is intended to correct these abuses without removing the protections needed by deserving debtors who find themselves in serious financial difficulty not of their own making and who need a "fresh start" free from past economic misfortunes.

The bill discourages debtors from "loading up"—buying a large quantity of goods on credit in anticipation of filing for bankruptcy—by creating a rebuttable presumption that debts for personal property totaling $500 and incurred within 45 days of filing for bankruptcy are nondischargeable. It also prevents debtors filing joint petitions from using both Federal and State exemptions and sets a total limit of $4,000 on personal and household items, valued under $200 each, which may be exempted by a debtor. And, it tightens chapter 13 provisions making this chapter more equitable to all parties. A more detailed description of the bill's provisions follows this statement.

We believe this bill represents a sound and reasonable approach to correcting abuses of the bankruptcy law while still protecting deserving debtors from creditor overreaching.

I hope the Senate will act expeditiously on these proposed bankruptcy law revisions. I also believe, however, that a more pressing priority is to cure the serious constitutional defect in the bankruptcy courts identified by the Supreme Court in the Northern Pipeline case. As assistant attorney general Jonathan Rose testified on behalf of the Department of Justice at last Monday's hearing before the Subcommittee on the Courts:

> The bankruptcy court system established by the 1978 act is not longer functioning. * * * prompt action by Congress to restructure the bankruptcy court system is essential to return that system to a sound and workable basis.

Especially given today's difficult economic times, which have thrown businesses and individuals alike into unexpected bankruptcy, we must have a forum that can effectively and decisively dispose of bankruptcy matters. It is my hope that Congress will act quickly to resolve the bankruptcy courts issue and that soon thereafter

it will turn to needed changes in substantive bankruptcy law.

We have attempted to strike a balance between creditor and debtor needs in this proposal. But this is not necessarily the final word with respect to problems in the bankruptcy code. We are happy to work with our colleagues on the Judiciary Committee and with all interested parties—the credit industry as well as consumer groups—in refining this legislation. Given the difficult economic situation facing our country today, it is essential that we have a bankruptcy code that is workable and fair to all concerned.

I ask unanimous consent that the text of the bill and a factsheet describing the provisions in the bill be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 333

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Bankruptcy Improvements Act of 1983".

SEC. 2. Section 109 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) Notwithstanding any other provision of this section, no individual may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceeding 180 days if—

"(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case, or

"(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362.".

SEC. 3. Section 521 of title 11, United States Code, is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) if the debtor's schedule of assets and liabilities includes consumer debts which are secured by property of the estate, file and serve, within thirty days of the order for relief under chapter 7 of this title, or within such additional time as the court, for cause, within such 30-day period fixes, upon each creditor holding such security and the trustee, a statement expressing the debtor's intention with respect to retention or surrender of the collateral and, if applicable, specifying that the collateral is claim as exempt, that the debtor intends to redeem the collateral, or that the debtor intends to reaffirm debts secured by the collateral;".

SEC. 4. Section 522(d)(3) of title 11, United States Code, is amended by inserting "or $4,000 in value in all items" after "item".

SEC. 5. Section 522(m) of title 11, United States Code, is amended by adding at the end thereof the following: "For purposes of subsection (b) in a joint case in which the estates of the debtors are consolidated under section 302(b) of this title, both debtors may exempt from property of the consolidated estates property described in paragraph (1) of such subsection or, in the alternative, both debtors may exempt from property of the consolidated estates property described in paragraph (2) of such subsection. If the debtors do not agree which property to exempt under such subsection, then both debtors shall be deemed to have exempted from the property of the consolidated estates property described in paragraph (1) of such subsection.".

SEC. 6. Section 523 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) For purposes of paragraph (2) of subsection (a) of this section, any debt or debts aggregating more than $500 for items of a kind specified in section 522(d)(2), 522(d)(3), or 522(d)(4) of this title held primarily for personal, family, or household use, incurred on or within 45 days before the date of the filing of a petition under this title, is presumed to be nondischargeable under such subsection.".

SEC. 7. Section 524 of title 11, United States Code, is amended—

(1) in subsection (a)(2) by striking out "or from property of the debtor,", and

(2) by adding at the end thereof the following new subsection:

"(f) Nothing contained in subsection (c) and (d) of this section prevents a debtor from voluntarily repaying any debt.".

SEC. 8. Section 525 of title 11, United States Code, is amended—

(1) by inserting "the" before "Perishable",

(2) by inserting "(a)" before "Except", and

(3) by adding at the end thereof the following new subsection:

"(b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such a debtor or bankrupt, solely because such debtor or bankrupt—

"(1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;

"(2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or

"(3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.".

SEC. 9. Section 547(c) of title 11, United States Code, is amended—

(1) in paragraph (5) by striking out "or" at the end thereof,

(2) in paragraph (6) by striking out the period at the end thereof and inserting in lieu thereof "; or", and

(3) by adding at the end thereof the following new paragraph:

"(7) if the aggregate value of all property that constitutes or is affected by such transfer—

"(A) in a case under chapter 7 or 13 of this title is less than $250; and

"(B) in a case under chapter 11 of this title is less than $750.".

SEC. 10. Section 1325 of title 11, United States Code, is amended—

(1) in subsection (a) by striking out "The" and inserting in lieu thereof "Except as provided in subsection (b), the",

(2) by redesignating subsection (b) as subsection (c), and

(3) by inserting after subsection (a) the following new subsection:

"(b)(1) If the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

"(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

"(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan be applied to make payments under the plan.

"(2) For purposes of this subsection, 'disposable income' means income which is received by the debtor and which is not reasonably necessary to be expended—

"(A) for the support of the debtor or a dependent of the debtor; or

"(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of the business.".

SEC. 11. (a) Section 1326 of title 11, United States Code, is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively, and

(2) by inserting before such subsections the following new subsection:

"(a)(1) Unless the court orders otherwise, the debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed.

"(2) A payment made under this subsection shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor, after deducting any unpaid claim allowed under section 503(b) of this title.".

SEC. 12. Section 1329 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) On request of the debtor, the trustee, or a creditor holding an allowed unsecured claim and after notice and a hearing, the plan shall be modified under subsection (a) of this section to any extent that any change in the debtor's anticipated disposable income substantially affects whether the plan, before modification, complies with the requirements specified in section 1325(a)(6) and section 1325(b) of this title.".

SEC. 13. The amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

DESCRIPTION OF CONSUMER BANKRUPTCY IMPROVEMENTS ACT OF 1983

The Consumer Bankruptcy Improvements Act would make the following substantive changes in our current bankrupty code:

Sec. 2 prevents repeated Chapter 7 or Chapter 13 filings by debtors solely for the purpose of maintaining the automatic stay in effect. This tightens up a loophole in current law that in some instances has prevented creditors from having the automatic stay lifted in appropriate circumstances.

Sec. 3 provides that within 30 days of filing for bankruptcy under Chapter 7 the debtor give each secured creditor and the trustee a statement showing whether the debtor intends to retain or surrender the collateral. The statement shall also specify whether the retained collateral is claimed as exempt or will be redeemed, or if the debt is to be reaffirmed. This facilitates planning by both the debtor and the creditor for the ultimate disposition of the debtor's estate. Current law has no such provision.

Sec. 4 sets a total exemption limit of $4,000 on personal and household items, each of which is valued at under $200. This prohibits "stacking" of personal property exemptions without limit. Current law sets no such ceiling.

Sec. 5 requires both debtors filing a joint petition for bankruptcy to choose either state or federal exemptions. This prevents the practice, unintentionally permitted under current law, of "piggybacking" state and federal exemptions.

Sec. 6 creates a rebuttable presumption that any debt or debts for personal property totaling $500 incurred within 45 days of filing for bankruptcy are nondischargeable. This would discourage debtors from buying a large quantity of goods on credit in anticipation of filing for bankruptcy. There is no similar "loading up" provision in current law.

Sec. 7 clarifies that under current law a debtor is free to relay voluntarily any discharged debt, even if reaffirmation of that debt is disallowed by the court. This change meets the concern expressed by some creditors that, because the court must approve all reaffirmations, debtors are prevented from repaying debts they want to pay.

Sec. 8 prevents private employers from terminating employees or discriminating against potential employees solely because the person had been or was in bankruptcy court, had been insolvent before the commencement of a bankruptcy case or had not paid a debt that was dischargeable or discharged. This provision also affords the same protections to any person associated with the debtor. Current law prevents discrimination against debtors by governmental bodies.

Sec. 9 prevents the trustee from avoiding (i.e., undoing) pre-petition payments made by a debtor to a creditor if the amount is less than $250 in a personal bankruptcy and less than $750 in a business bankruptcy. This change will expedite bankruptcy proceedings. Under current law the trustee may nullify most payments made within 90 days of filing.

Sections 10, 11 and 12 tighten provisions for Chapter 13 (repayment plan) bankruptcies, making this Chapter more equitable to all parties.

Sec. 10 amends Chapter 13 to prevent the court from approving a "zero" repayment plan if the debtor has the ability to pay at least some of his debts.

Sec. 11 requires the debtor to begin making payments within 30 days after the plan is filed. The payments are made to the trustee who holds them until the plan is confirmed. This provision allows debtors to accustom themselves to making payments immediately. Under current law, payments do not begin until the plan is confirmed.

Sec. 12 allows the debtor, unsecured creditors, or the trustee to request a modification of the Chapter 13 repayment plan if the debtor's disposable income has changed substantially.●

● Mr. KENNEDY. Mr. President, I am pleased to join my colleagues, Senator METZENBAUM and Congressman RODINO in consponsoring the Consumer Bankruptcy Improvements Act of 1983. This bill would amend existing law to address debtor abuses without destroying the balance between creditor and debtor interests which was carefully crafted in the comprehensive bankruptcy reform legislation enacted by Congress in 1978.

The Bankruptcy Reform Act of 1978 was the culmination of an extensive examination by Congress of the operation of our bankruptcy laws. As the result of its investigation, Congress determined that significant changes in the laws concerning individual bankruptcy were necessary. One of the principal purposes of the reforms in the 1978 act was to eliminate creditor overreaching which was possible under existing law.

Our experience under the 1978 act, although brief, indicates that some modifications to that act are in order, to eliminate unintended loopholes and to make the system more efficient. The bill we introduce today makes important changes to existing law, including a $4,000 cap on the total value of personal and household items which are exempt, thus prohibiting "stacking" of personal property exemptions without limit. It also prevents "piggybacking" State and Federal exemptions by requiring that debtors filing a joint petition must choose either State or Federal exemptions. The bill would discourage "loading up" of debts by debtors anticipating bankruptcy by creating a rebuttable presumption against discharge of any debt or debts for personal property totaling $500 and incurred within 45 days of filing for bankruptcy. In the area of reaffirmation, the bill clarifies the debtor's ability to voluntarily repay any debt, whether or not a court has approved a reaffirmation of that debt. The bill also makes significant changes to the laws governing chapter 13 repayment plan bankruptcies to assure that "zero" repayment plans are not approved, that repayment begins promptly, and to provide a mechanism to change the repayment plan to accommodate changed circumstances.

The reforms contained in this bill are a starting point for making the necessary adjustment in existing law to protect creditor interests, without punishing honest debtors who need the relief our bankruptcy system provides. We must pay special attention to making changes in our bankruptcy laws during this period of economic crisis. Today, this country is experiencing the highest unemployment since 1937; more than 12 million American workers who want jobs cannot find them. Real interest rates are the highest we have seen since the Civil War, and the Federal Government's indebtedness is unprecedented.

In the light of these economic indicators, it is no wonder that the number of individuals who have been forced to file bankruptcy has increased significantly since 1979. The increase in bankruptcy filings only parallels other stark indicators of our economic crisis. For example, as of the end of May 1982, more than a third of the farm loans held by the Farmers Home Administration were delinquent. Farm foreclosures during the first half of fiscal year 1982 soared 600 percent over the same period in the previous year.

The link between the depressed state of our economy and the increase in bankruptcy filings is undeniable. I reject the claims made by some in the credit industry that the increase in bankruptcy filings in the past few years indicates that sweeping reforms are needed in our consumer bankruptcy laws. I agree that some modifications are needed, and I believe that this bill is an excellent starting point. I look forward to consideration of this measure by both Houses of Congress.●

By Mr. MATTINGLY:

S. 334. A bill to amend the Internal Revenue Code of 1954 to repeal the withholding of tax on interest and dividends and to increase the penalty for failing to supply taxpayer identification numbers on returns and statements; to the Committee on Finance.

WITHHOLDING OF TAXES ON INTEREST AND DIVIDENDS

Mr. MATTINGLY. Mr. President, I send a bill to the desk and ask for its appropriate referral.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. MATTINGLY. Thank you, Mr. President.

Mr. President, I rise today to introduce S. 344. This legislation serves two purposes. First, it will repeal the unfair 10 percent withholding tax on savings and dividend income that was passed in 1982. Second, it will institute a new method to improve compliance in a fair and equitable manner by increasing the penalty to $100 for those who do not include, or report incorrectly, a social security number or taxpayer identification number on any return, statement, or document, including the 1099 form and the individual income tax return.

Last year, I cosponsored an amendment offered by Senators HOLLINGS and KASTEN to remove from the TEFRA the 10 percent withholding tax on savings and dividends. I remain opposed to the withholding tax for a number of reasons.

Withholding 10 percent of interest and dividend income will penalize the vast majority of honest taxpayers. The Internal Revenue Service is on record as finding taxpayer compliance rates in the interest and dividend category as high as 89 percent.

A withholding tax would impose heavy startup and operating costs in addition to tremendous paperwork burdens on savers and savings institutions. The United States League of Savings and Loan Associations estimates that the startup costs of the withholding plan would amount to

$435 million for the industry and that annual operating costs would amount to $325 million. The costs are equally onerous on other affected industries. At a time when many in the financial and financial related industries are struggling to keep their heads above water, now is an inappropriate time to add to their operating expenses.

The 10-percent withholding tax on interest and dividends, moreover, would lower the effective yield on savings and stockownership. Most revenues would likely come from interest-bearing accounts. At a time of concern of "crowding out" by Government borrowing in the capital markets as a result of the high deficits, it makes no sense to reduce the deficit by reducing personal savings.

Taxpayers should pay the taxes that they owe the Federal Government. However, there is an alternative and better means of assuring that taxpayers comply than the 10-percent withholding tax on savings and dividend income. The legislation which I am introducing is such an alternative.

The IRS does not need a withholding tax to prevent evasion or underreporting of interest and dividend income. It needs instead to improve its computer programs and management so that it can match interest and dividend reports filed by corporations and banks with individual tax returns. The answer is for the IRS to put its own house in order, rather than to transfer an enormous administrative burden to the private sector. It is the responsibility of the Internal Revenue Service to match or crosscheck 1099 forms and individual income tax returns. By increasing the penalty for failure to include, or report correctly, the necessary social security or taxpayer identification number, the job of the IRS should be made easier and more effective.

Mr. President, there are less costly and cumbersome methods to improve taxpayer compliance than the withholding tax on savings and dividend income. I believe the method I am proposing is a prudent alternative.

By Mr. COHEN:

S. 335. A bill to provide for an increase in pay for members of the uniformed services in certain enlisted pay grades; to the Committee on Armed Services.

MILITARY CAREER ENLISTED PAY ADJUSTMENT ACT OF 1983

Mr. COHEN. Mr. President, today I have the privilege of introducing the Military Career Enlisted Pay Adjustment Act of 1983. This measure is an attempt to adjust the basic pay scales for the career enlisted personnel we want to retain in our armed services.

Time and again, we have heard of the importance of attracting and keeping top quality men and women in the Nation's military. These qualified professionals are essential, for without them the most sophisticated weaponry in the world is useless.

If there is one area where we cannot afford to cut corners, it is in recruiting and retention. Yet, unfortunately, that is precisely where the bulk of the administration's proposed defense cuts for fiscal year 1984 have been made.

Unless there is congressional action, we face the danger of repeating the mistakes made less than a decade ago when military pay caps, coupled with cuts in recruiting funds and the end of the GI bill, brought the All-Volunteer Force to its knees. We cannot afford to make that kind of mistake again.

The administration proposed the pay freeze so that it could retain the weapons systems included in the fiscal year 1984 budget. But one simple example demonstrates the error of this approach.

One of the procurement programs which continues to go forward is one in which I have a special interest as the chairman of the Armed Services Committee's Subcommittee on Sea Power and Force Projection. The Navy is rebuilding, and the goal is a 600-ship Navy. My question is, How are we going to provide adequate numbers of petty officers to man those ships if we do not provide the incentive for them to stay in the Navy?

Two years ago, the Armed Services Committee was told there was a 20,000 petty officer shortfall in the Navy. In response to Admiral Hayward's plea to stop the hemorrhage in career personnel—and to the pleas of the leaders of the other services who had seen low pay undercutting their readiness—we approved a number of measures improving military compensation.

Despite this, the committee was told a year ago that the petty officer shortfall had actually increased to 22,000. The reason was simple—the Navy was growing, and more men were needed to man the increased number of ships. So, in spite of the better pay and the positive effect it had on retention, higher requirements caused the shortfall to rise.

Today, the Navy is about 17,000 short of its petty officer goal. The high retention rate which has resulted from bringing pay up from its low level is having a positive impact. But we are going to lose that momentum if we freeze pay this year, and where that lost momentum will have its most devastating impact is in the career force.

According to the January 31 Army Times, the Joint Chiefs of Staff have sent a private memo to Defense Secretary Caspar Weinberger calling the decision to freeze pay "unfortunate" and saying it will "almost certainly" affect combat readiness. The Times quoted the memo as follows:

> The fact is that a pay freeze, resulting from a failure to provide the FY 84 pay adjustment following a four percent pay cap in FY 83 almost certainly will have an adverse impact on personnel retention and, as recent history has dramatically shown, a long-term negative effect on combat readiness of U.S. military forces. It is unfortunate that such a decision became necessary at a time when the military services were beginning to see a turnaround in previously poor retention rates.

This assessment is exactly in line with the message we have heard repeatedly—though it has apparently been forgotten by some of the same people who had delivered it—over the past 2 years. I would like to quote from a speech delivered less than 1 year ago by a top Pentagon manpower official. After discussing compensation improvements, he said this:

> If we do not continue these manpower program actions, we face some serious risks. We end up with a force unable to respond promptly to a rapidly developing crisis, a totally insufficient manpower mobilization base, and poorly trained, unmotivated people in inadequate numbers . . . an especially serious problem in the mid-grade enlisted ranks (of course this problem exists even with conscription).

I could not agree more. That is precisely the situation I found in 1980 when I visited Fort Campbell, Ky., to look at problems of low readiness caused by shortages in the career enlisted ranks. The readiness situation was at virtually a crisis level, and the reason was not inadequate equipment. It was the absence of enough personnel to man the weapons in the inventory.

It is from this perspective that I have developed the measure I am introducing today. The bill would increase pay throughout the career enlisted ranks. Pay for E-4's would go up by 2 percent, for E-5's by 5 percent, for E-6's by 4 percent, and for E-7's, E-8's, and E-9's by 3 percent.

The need for this approach is clear, for career enlisted pay has been shrinking. If pay is frozen this year, it could mean that military personnel will have again fallen 12-percent behind their civilian counterparts—and only 2 years after we had attempted to rescue them from the serious pay erosion of the previous several years.

Last year, when the administration proposed capping pay at a 4-percent increase, it said there could be a comparability raise this year. Well, the 4-percent increase these people did not receive—the initial proposal was for an 8-percent boost—is now being compounded by a 7.6-percent increase they will not receive. The Secretary of Defense is again saying there will be a full comparability raise next year, but military personnel will not forget that this is an echo of the same message they heard last year. That message was backed away from before 1982 was out, but the decision to freeze pay this year makes the prospect of a compara-

bility raise next year even more doubtful. This is especially so since pay will be constrained by the cost of the weapons systems approved in this year's budget and being paid for over the next several years.

For those considering whether to make the military a career, this is cause for somber reflection. That is why I have targeted this bill as I have.

The 5-percent increase for those in grade E-5 is provided because that is the point where an individual is likely to be coming up for his or her first reenlistment decision. It is also a point at which he or she will be assuming more responsibility.

Right now, there appears to be little incentive to reenlist. In 1971, an E-5 with 4 years of service received pay 2.8 times greater than that of an E-1 and 2.7 times greater than that of an E-2; In 1982, E-5 pay had been compressed to a point where it was only 1.6 times greater than that of an E-1 and 1.4 times greater than that of an E-2.

The pay compression problem and the erosion of military pay relative to the civilian sector spurred us to action a couple of years ago, with the promise that we would never let it happen again. Yet, now, so soon after, many have forgotten the "hollow Army" which the Army's Chief of Staff, Gen. Edward Meyer, referred to at that time.

In the late 1970's, highly trained noncommissioned officers and petty officers who had filled the roles of squad leaders, platoon sergeants, crew chiefs, aircraft maintenance chiefs, technicians, and, most of all, middle-management leaders and training specialists, had opted for better paying jobs in the civilian sector. Their major complaint was "inadequate compensation for services performed."

What we should have learned at that time is that holding down military pay has its costs, and they are substantial ones. Just how true that is, is reflected in an analysis done by the Navy.

Historically, the Navy has found that it takes 2.44 accessions to produce each new petty officer. Even more dramatic, it concluded that the cost of replacing one petty officer with a new recruit is over $38,000 and the process takes 4 years.

Even with this evidence of the importance of providing adequate pay for military personnel, it would be naive of me to stand before the Senate and plead for full comparability, or even the full amount originally projected for those in our Armed Forces. We do have a huge budget deficit facing us as we prepare to debate defense and social issues for fiscal year 1984. In addition, President Reagan has asked for a pay freeze for civilian Federal workers. Fiscal restraint is our goal, and every dollar we spend must be justified.

But I proposed this limited pay adjustment because of the reality that it will cost us much more if we do not take this kind of step on behalf of career enlisted personnel. We have to demonstrate that we have not forgotten the lesson learned only a few short years ago.

It is true that retention rates for career enlisted personnel are improving. But the short-term positive trend can be quickly reversed if we fail to act, as experience demonstrates.

In 1975, career reenlistments were at 83 percent of eligible personnel. Last year, the level was 76 percent, up from 68 percent in 1979, when career enlisted personnel had their lowest reenlistment rate since 1973. The swing within this short period shows just how much the actions we take—or fail to take—have an impact on career decisions.

Most of the individuals who turned thumbs down on reenlisting in the late 1970's have been lost to the armed services forever. The military may have replaced them by accelerating promotions for junior enlisted personnel into more senior enlisted grades. It will take time, however, for them to gain the expertise which their predecessors had. We cannot afford to let this happen again.

Let us not fool ourselves. It is unrealistic to expect our petty officers to remain in the service when we send them to sea year after year, away from families and homes for tours longer than during any other post-World War II peacetime period, when we work them 60 to 80 hours each week while at sea, and when we then fail to keep their pay at a reasonable level.

Right now, we have brave young marines in Lebanon as part of a peacekeeping force. They find it hard to accept the arguments of those who say their pay is sufficient, since they are serving in peacetime.

Yet these men, who by their military service are already sacrificing many of the common luxuries of life which so many of us take for granted, are being asked to make further sacrifices. Three times in the 1970's caps were placed on military but not private sector pay. It happened again last year, and now these courageous individuals are being asked to accept a freeze which will not be borne by those working in the civilian community.

So I am not uncomfortable in offering this bill to my colleagues for their consideration. I believe that now—this year—is the time to send the message to our career enlisted personnel that they are appreciated, they are needed, and they are as vitally important, if not more important, to the defense of this Nation as are weapons systems.

The Congressional Budget Office (CBO) estimates that my proposal will cost $827 million—about one-third the cost of a comparability increase. And that is using CBO's comparability figures of 5.5 percent, rather than the administration's 7.6-percent figure. At the same time, CBO estimates that the military would lose only one-third as many career personnel as it would under a freeze. Furthermore, the cost per careerist retained would be a little more than half the cost under comparability. The CBO analysis is as follows:

CONGRESSIONAL BUDGET OFFICE ANALYSIS OF COHEN MILITARY PAY OPTION, JANUARY 31, 1983

	1984	1985	1986	1987	1988	Total
Additional costs (millions of dollars; over fiscal year 1983):						
Freeze	0	1,883.9	3,757.5	6,034.2	8,300.8	19,976.4
Cohen	827.2	2,760.7	4,849.6	7,059.5	9,397.1	24,894.1
Comparability	2,141.9	4,390.5	6,812.8	9,325.4	12,084.9	34,755.4
Career manpower (thousands):						
Freeze	891.3	904.6	901.8	906.9	909.1	
Cohen	901.9	925.4	931.1	943.8	948.9	
Comparability	907.5	936.3	946.6	963.5	970.2	
Cost per additional career member (thousands of dollars; compared to pay freeze):						
Cohen	78.0	42.2	37.3	27.8	27.5	
Comparability	132.2	79.1	68.2	58.1	61.9	

My proposal is, I believe, a most cost effective and responsible one. And it is an approach which demonstrates to our experienced NCO's and petty officers the Nation's recognition of their skill, experience, and dedication.

I know that some will question the bill's failure to provide a pay boost for the lowest enlisted grades—especially in light of my strong commitment to the volunteer force. These junior personnel are not being ignored, for I am joining with some of my colleagues in reintroducing legislation offering po-

tential enlistees GI bill educational benefits. These benefits will, I believe, provide a good incentive for motivated, high quality individuals to consider military service.

As for officers, assessions should continue at the current level or, perhaps, increase as long as Congress continues to support the Reserve Officer Training Corps (ROTC) and similar programs. In addition, our proposed new education benefits package, if enacted, will offer a further incentive.

In conclusion, let me state that there is one overriding factor Congress must remember in considering the merits of my bill. Whether we continue with the All-Volunteer Force, which I believe we will, or go back to conscription at some time, we cannot draft NCO's and petty officers. They are dedicated and committed to their country. But, if we create too many disincentives for service—reduced pay, poor living and working conditions, too many separations from family, and unreasonably long hours each week—they may simply conclude they can no longer afford to make the sacrifices which they have proudly been making for their country, and for each one of us.

Before closing, I want to thank the Non-Commissioned Officers Association of the U.S.A. (NCOA) for its help and support with this bill. The NCOA, as most of you know, has been a real leader in working for responsible legislation on behalf of the men and women serving in our Armed Forces. NCOA's commitment to our military personnel has been demonstrated to me repeatedly during my time as a member of the Armed Services Committee's Manpower Subcommittee. I have been proud to work with it over these past few years on legislation to aid service personnel, and I am pleased to have the organization's support in this important effort.

As my colleagues consider the merits of this proposal—and, I hope, consider cosponsoring it—I hope they will remember the words of Machiavelli, who said:

> Money it not the sinews of war, although it generally is so considered . . . It is not gold but good soldiers that insure success at war.

This bill is aimed at retaining those good soldiers. I hope it will have the support of all of you.

By Mr. NUNN (for himself, Mr. RUDMAN, Mr. CHILES, Mr. NICKLES, Mr. HATCH, Mr. ROTH, Mr. KENNEDY, Mr. DECONCINI, Mr. STENNIS, Mr. JOHNSTON, Mr. PRYOR, Mr. HOLLINGS, and Mr. EAST):

S. 336. A bill to increase the penalties for violations of the Taft-Hartley Act, to prohibit persons, upon their convictions of certain crimes, from holding offices in or certain positions related to labor organizations and employee benefit plans, and to clarify certain responsibilities of the Department of Labor; to the Committee on Labor and Human Resources.

LABOR MANAGEMENT RACKETEERING ACT OF 1983

Mr. NUNN. Mr. President, today I introduce legislation which will revise current Federal labor laws to more effectively combat the problem of labor corruption. Senators WARREN RUDMAN, LAWTON CHILES, DON NICKLES, ORRIN G. HATCH, WILLIAM V. ROTH, JR., EDWARD M. KENNEDY, DENNIS DECONCINI, JOHN C. STENNIS, J. BENNETT JOHNSTON, DAVID PRYOR, ERNEST F. HOLLINGS, and JOHN P. EAST join me in introducting this legislation. Designated the Labor Management Racketeering Act of 1983, this bill will increase the criminal penalties for violations of the Taft-Hartley Act, prohibit immediately upon conviction of certain persons from holding certain positions in unions or employee benefit plans, and clarify the Department of Labor's responsibilities to investigate and refer allegations of criminal activity.

As worded, this bill is identical to S. 1785, the Labor Management Racketeering Act of 1982, which was passed by unanimous consent in the Senate on two separate occasions during the last Congress. Not only did the bill win approval from the Senate, but it also generated enthusiastic support from a wide range of interests outside the Congress. It has been publicly endorsed by the Department of Labor, the Department of Justice, Lane Kirkland of the AFL-CIO as well as George Lehr, executive director of the Teamsters Central States Pension Fund.

Of particular note was Lane Kirkland's endorsement of the bill in his testimony before the Permanent Subcommittee on Investigations in October 1981. He reiterated that support in his statement submitted during a hearing of the House Labor-Management Relations Subcommittee, held December 13, 1982. We have worked very closely with Mr. Kirkland and the AFL-CIO in ironing out possible difficulties with the bill. The bill which I introduce today reflects a well-reasoned and effective approach to the problem of labor corruption, reached with the support and cooperation of the AFL-CIO.

The bill attempts to remedy serious problems concerning the infiltration of some unions and some employee benefit plans by corrupt officials who have no real concern for the well-being of the honest rank-and-file union members they pretend to represent. Those problems were graphically illustrated in public hearings on waterfront corruption before the Permanent Subcommittee on Investigations in February 1981. The legislation, which is now before us, is a direct result of those hearings. As ranking minority member and former chairman of the subcommittee, I had the opportunity to direct an extensive staff investigation of criminal activity within both the International Longshoremen's Association (ILA) and the American shipping industry.

This set of hearings followed a very extensive investigation of the waterfront and the corruption on the waterfront by the U.S. Department of Justice and the FBI. They did a superb job.

In 1975 the Justice Department launched a nationwide investigation of racketeering on our waterfronts. This sweeping inquiry culminated in the criminal convictions of more than 100 high-level ILA officials and shipping company executives.

These persons were charged with a variety of offenses ranging from violating the Taft-Hartley Act to extortion, payoffs, kickbacks, threats, intimidation, obstruction of justice, and income tax evasion.

Spurred by the success of the Department of Justice's UNIRAC investigation, the subcommittee staff interviewed numerous witnesses and reviewed countless other items of evidence in order to convey to the American public an accurate portrait of the American waterfront in the 1980's. That portrait, as presented in 2 weeks of hearings in February of 1981, is, unfortunately, a dismal one. Witness after witness described the struggle for economic survival in some ports which are riddled with a pervasive pattern of kickbacks and illegal payoffs to union officials.

My colleagues and I heard of payoffs to insure the award of work contracts, payoffs to maintain contracts already awarded, payoffs to insure labor peace, payoffs to allow management circumvention of labor strikes, payoffs to prevent the filing of fraudulent workmen's compensation claims, payoffs to expand business activity into new ports, and payoffs to accord certain companies the freedom to circumvent ILA contract requirements with impunity.

Especially disturbing is the fact that the evidence clearly suggests that, through that system of payoffs, recognized leaders of the traditional organized crime families influence and effectively dominate the International Longshoremen's Association and large segments of the American shipping industry. Again last year our subcommittee, in public hearings on the Hotel Employees and Restaurant Employees International Union, received evidence of the corrupt influencee of organized crime in labor-management relations in other industries. It is a sobering event, indeed, to learn that substantial portions of our national economy have fallen prey to the influence of organized crime.

I might add that their investigation and the revelations that came from that, with the cooperation we had from the Justice Department and the FBI, were absolutely essential in both the hearings and in the framing of this legislation.

In the case of the waterfront industries, we were told that a payoff is commonly treated as a mere cost of doing business which can be, and is, routinely passed on as an added cost to the consumer. Our traditional and cherished notions of free enterprise have become nearly nonexistent in some ports of this country.

These payoffs, though illegal under current law, are punishable only as a misdemeanor.

The bill makes any such violation involving an amount of money greater than $1,000 a felony, punishable by up to 5 years imprisonment or a fine of up to $15,000, or both.

Our proposal also attempts to rid labor organizations and employee benefit plans of the influence of persons convicted of criminal offenses. Current disbarment provisions—29 U.S.C. 504 and 29 U.S.C. 1111—are expanded in several significant ways: Enlarging the categories of persons affected by the disbarment provisions; increasing the time barred from office or position from 5 to a possible maximum of 10 years; and providing for disbarment immediately upon conviction rather than after appeal.

The bill does provide that any salary otherwise payable shall be placed in escrow pending final disposition of any appeal.

Finally, our hearings examined more than the ways and means of criminal corruption itself. We also explored the adequacy of law enforcement's response to this corruption. As for the waterfront, several things quickly became obvious: First, that the Department of Justice, through a massive assignment of resources and manpower in UNIRAC, had had great success in the short run; second, that, if we are to eliminate such corruption on a permanent basis, continuous monitoring and enforcement efforts are required; and third, that the Department of Labor had generally failed to participate in criminal law enforcement efforts in this area. To correct this problem and to maximize available law enforcement resources in this area, the bill clearly delineates the responsibility and authority of the Department of Labor to actively and effectively investigate and refer for prosecution criminal activities on the waterfront.

On the need for disbarment of convicted officials immediately upon conviction, I point out that our hearings in February 1981 emphasized the need for such a provision. The testimony established case after case where convicted officials remained in office years after conviction while the appeal process dragged on, controlling union funds despite their convictions. We heard of instances where management representatives who had served as Government witnesses were actually required to conduct bargaining negotiations with the very individuals who had been convicted as a result of their testimony, long after the trials had finished.

We received that testimony in February 1981. Despite the Senate's approval and our efforts in the House, this bill has not yet become law. Unfortunately, almost a full 2 years later, convicted officials continue to do business "as usual" on the waterfront and elsewhere despite their earlier convictions on significant criminal charges. As but one example, in the Miami case covered during our hearings, petitions for writs of certiorari are still pending before the Supreme Court. As a result, the positions of president, secretary-treasurer, and office manager in the local union are still today held by those same convicted individuals whom we heard testimony about more than 2 years ago. Clearly, time has not lessened the need for and the importance of this legislation.

Recognizing the significance of disbarment immediately upon conviction, the bill expressly makes that provision retroactive. As such, convicted officials whose appeals are now still pending will be immediately barred upon enactment of this legislation. The bill's enactment would end immediately open control of union funds and activities by those convicted in Miami as well as other recently convicted officials, including Teamsters President Roy Lee Williams.

In sum, I want to stress again that the provisions of this bill are designed to protect the best interests of labor and management, as well as the American consumers. Our hearings strongly indicated that corruption within the leadership of the ILA, as documented by the convictions of numerous ILA officers, is depriving the average longshoreman of the full benefits of his union membership. Not only did the ILA itself fail to act to remove those officials and prevent further corruption, but ILA President Teddy Gleason himself testified, with apparent lack of concern, that the ILA "will have to * * * run a rehabilitation center." By contrast, the provisions of this bill will protect the union member where corrupt officials have failed to do so.

Mr. President, the record is clear that the vast majority of union officers, employee benefit plan officials, and rank-and-file union members are honest, hard-working, law-abiding citizens. Our Nation can and should be justifiably proud of the enormous contribution our unions have made to the economic and social strength of the United States. But our hearings have shown that a small group of parasites have fastened themselves onto the body of the labor movement. These parasites are perverting the true interests of the union members they claim to represent through a pattern of payoffs and extortion. The unions have labored to shed themselves of these people, but in many cases they have been unable to do so alone. I believe that the unions need our help here in Congress. I believe that this bill is a major step forward in providing the extra assistance needed for the unions to finally rid themselves of those corrupt officials who are motivated not by the welfare of the American worker but by their own greed.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 336

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "Labor Management Racketeering Act of 1983".

SEC. 2. (a) Subsection (d) of section 302 of the Labor Management Relations Act, 1947 (29 U.S.C. 186) is amended to read as follows:

"(d)(1) Any person who participates in a transaction involving a payment, loan, or delivery of money or other thing of value to a labor organization in payment of membership dues or to a joint labor-management trust fund as defined by clause (B) of the proviso to clause (5) of subsection (c) of this section or to a plant, area, or industry-wide labor-management committee that is received and used by such labor organization, trust fund, or committee, which transaction does not satisfy all the applicable requirements of subsections (c)(4) through (c)(9) of this section, and willfully and with intent to benefit himself or to benefit other persons he knows are not permitted to receive a payment, loan, money, or other thing of value under subsections (c)(4) through (c)(9) violates this subsection, shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed $1,000, such person shall be guilty of misdemeanor and be subject to a fine of not more than $10,000, or imprisoned for not more than one year, or both.

"(2) Except for violations involving transactions covered by subsection (d)(1) of this section, any person who willfully violates this section shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed $1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than $10,000, or imprisoned for not more than one year, or both.".

(b) Subsection (e) of such section is amended to read as follows:

"(e) The district courts of the United States and the United States courts of the territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of Rule 65 of the Federal Rules of Civil Procedure (relating to notice to opposite party), over—

"(1) suits alleging a violation of this section brought by any person directly affected by the alleged violation, and

"(2) suits brought by the United States alleging that a transaction involving a payment, loan, or delivery of money or other thing of value to a labor organization in payment of membership dues or a joint labor management trust fund as provided for in clause (B) of the proviso to clause (5) of subsection (c) of this section or to a plant, area, or industry-wide labor-management committee violates this section,

to restrain such violations without regard to the provisions of section 6 of the Clayton Act (15 U.S.C. 17), section 20 of such Act (29 U.S.C. 52), and sections 1 through 15 of the Act entitled 'An Act to amend the Judicial Code to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (29 U.S.C. 101-115).".

SEC. 3. (a) So much of subsection (a) of section 411 of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111) as follows "the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401)," is amended to read as follows: "any felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

"(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

"(2) as a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan, or

"(3) in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan, during or for the period of ten years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least five years after such conviction or after the end of such imprisonment, whichever is later, and unless prior to the end of such period, in the case of a person so convicted or imprisoned (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in paragraphs (1) through (3) would not be contrary to the purposes of this title. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice to such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such Parole Commission that such service would be inconsistent with the intention of this section.".

(b) Subsection (b) of such section is amended to read as follows:

"(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both.".

(c) Subsection (c) of such section is amended to read as follows:

"(c) For the purpose of this section:

"(1) A person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

"(2) The term 'consultant' means any person who, for compensation, advises, or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

"(3) A period of parole shall not be considered as part of a period of imprisonment.".

(d) Such section is amended by adding at the end thereof the following:

"(d) Whenever any person—

"(1) by operation of this section, has been barred from office or other position in an employee benefit plan as a result of a conviction, and

"(2) has filed an appeal of that conviction, any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute from assuming any position from which such person was previously barred.".

SEC. 4. (a) So much of subsection (a) of section 504 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504) as follows "or a violation of title II or III of this Act" is amended to read as follows: "any felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment, or conspiracy to commit any such crimes, shall serve or be permitted to serve—

"(1) as a consultant or adviser to any labor organization,

"(2) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization,

"(3) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organization, or in a position having specific collective bargaining authority or direct responsibility in the area of labor-management relations in any corporation or association engaged in an industry or activity affecting commerce,

"(4) in a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization, or

"(5) in any capacity that involves decision-making authority concerning, or decision-making authority over, or custody of, or control of the moneys, funds. assets, or property of any labor organization, during or for the period of ten years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least five years after such conviction or after the end of such imprisonment, whichever is later, and unless prior to the end of such period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in clauses (1) through (5) would not be contrary to the purposes of this Act. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection.".

(b) Subsection (b) of such section is amended to read as follows:

"(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both.".

(c) Subsection (c) of such section is amended to read as follows:

"(c) For the purpose of this section:

"(1) A person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

"(2) A period of parole shall not be considered as part of a period of imprisonment.".

(d) Such section 504 is amended by adding at the end thereof the following:

"(d) Whenever any person—

"(1) by operation of this section, has been barred from office or other position in a labor organization or employee benefit plan as a result of a conviction, and

"(2) has filed an appeal of that conviction, any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual employer or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of such person's conviction on

appeal, the amounts in escrow shall be returned to the individual employer or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute from assuming any position from which such person was previously barred.".

SEC. 5. (a) The first paragraph of section 506 of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by striking out "In order" and inserting in lieu thereof the following:

"(a) COORDINATION WITH OTHER AGENCIES AND DEPARTMENTS.—In order".

(b) Such section is amended by adding at the end thereof the following new subsection:

"(b) RESPONSIBILITY FOR DETECTING AND INVESTIGATING CIVIL AND CRIMINAL VIOLATIONS OF EMPLOYEE RETIREMENT INCOME SECURITY ACT AND RELATED FEDERAL LAWS.—The Secretary shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of this title and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18 of the United States Code. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this title and other related Federal laws.".

(c) The title of such section is amended to read as follows:

"Coordination and responsibility of agencies enforcing Employee Retirement Income Security Act and related Federal laws".

SEC. 6. (a) The amendments made by section 3 and section 4 of this Act shall take effect with respect to any judgment of conviction entered by the trial court after the date of enactment of this Act, except that that portion of such amendments relating to the commencement of the period of disability shall apply to any judgment of conviction entered prior to the date of enactment of this Act if a right of appeal or an appeal from such judgment is pending on the date of enactment of this Act.

(b) Subject to subsection (a) the amendments made by sections 3 and 4 shall not affect any disability under section 411 of the Employee Retirement Income Security Act of 1974 or under section 504 of the Labor-Management Reporting and Disclosure Act of 1959 in effect on the date of enactment of this Act.

● Mr. RUDMAN. Mr. President, today we are reintroducing the Labor-Management Racketeering Act. What I consider the meat of the bill would permit disbarment upon conviction of union or employee benefit plan officials. However, the bill makes a number of other important changes which expand present law. It would enlarge the number of union positions subject to disbarment, extend the period of disbarment from 5 to 10 years, increase the penalties for crimes involving more than $1,000, and broaden the scope of crimes that would subject officials to disbarment. Also, more as a reaction to past Department of Labor policies than to the present ones, the bill would clearly delineate the responsibility and authority of the Department of Labor to actively and effectively investigate and refer for prosecution of criminal activities in unions. These changes might not be necessary if unions themselves had, in the past, actively pursued courses designed to rid their unions of corrupt officials. Unfortunately, this has not been the case. However, times are changing, and it is important to note that this legislation is supported by the AFL-CIO and the Teamsters Central State pension fund.

The recent interest in this legislation stems largely from the conviction of Teamsters Union President Roy Lee Williams. It is important to remember, however, that this is only the most recent example of the need for this legislation. There are any number of cases where union officials, often controlled by organized crime, have remained in office for extended periods while their convictions were appealed. In such cases, not only do the officials often continue their corrupt activities, but witnesses against them often find themselves on opposite sides of the bargaining table in contract negotiations.

The Labor-Management Racketeering Act responds to the limitations in present law which have resulted in the frustration of the intent of previously enacted statutes. It is the product of hearings before the Permanent Subcommittee on Investigations which identified the insidious influence organized crime continues to hold over American unions. During the last session, the subcommittee held extensive hearings on waterfront corruption. Most of the testimony dealt with the Department of Justice's Miami Organized Crime Strike Force investigation that began during October 1975. The investigation, known as UNIRAC, culminated in a number of convictions of major union officials.

Witnesses who were involved with UNIRAC testified that the large network of U.S. ports is controlled by organized crime. Payoffs, larceny, sabotage, and labor disruption are so prevalent that they are included as a part of the cost of doing business. Without question, when these conditions prevail, free enterprise does not exist. Competition is stifled, making it impossible for legitimate business to operate. The result is a cancer on our economy; a parasite which feeds of consumers, legitimate businesses and union members alike.

It would be unfair to those involved in the UNIRAC investigation for me to say that no substantial gains were made. However, according to witnesses at our hearings, the corruption continues—it is business as usual on the docks. An unanticipated consequence of the legislation as presently written has occurred. During the pendency of their appeals, convicted union officials continued to operate in their former positions. The president of a Miami local, who was tried, convicted, and sentenced as a result of the UNIRAC effort, was reelected president of his union. Other convicted union officials who exercised their fifth amendment rights during our hearings continued to hold and abuse their union positions during the pendency of their appeals. Racketeering and corruption continued, resulting in a nullification of the efforts of the UNIRAC investigation.

As further emphasis of the need for this legislation I would like to recite the facts of a case involving Bernard Rubin. Bernard Rubin was a president of a number of locals of the International Union of Laborers in south Florida. He was also a district and international officer, as well as a trustee on numerous trust funds. Mr. Rubin was indicted on July 8, 1975, and convicted on October 22, 1975, of embezzling nearly a half million dollars from union trust funds as well as racketeering and other charges. Because present law does not permit removal of union officials until their appeals have been exhausted, Mr. Rubin remained in office. By September of 1977, Department of Justice officials learned that Mr. Rubin had further embezzled over $2 million of union and union trust fund assets after his conviction. Even then, the only way that Justice officials were able to remove Mr. Rubin from his official positions was when the judge in the case threatened to revoke Mr. Rubin's bond. Finally, under this pressure, the union removed Mr. Rubin from his positions. This is but one example demonstrating the need for legislation whereby union officers or trust fund trustees would be suspended automatically after felony conviction of abuse or misuse of their official position.

I think this is an extremely appropriate time to adopt this legislation. The Nation is witnessing a major decline in the number of union members, and I suspect that a major factor behind that decline is the corrupt, crime-ridden reputation of some of our major unions. Further, these leeches on our free markets drain the economic lifeblood of the industries they dominate. This legislation will go a long way toward correcting the problem.●

● Mr. CHILES. Mr. President, I join with Senator NUNN in reintroducing today an important piece of legislation identical to a bill which passed this Senate unanimously last July. It is the Labor-Management Racketeering Act of 1983. Its purpose is to help the worker by protecting pension funds from criminal mismanagement. It is the most significant effort dealing with labor corruption since Landrum-Griffin in 1959 as it will bring tougher penalties for those convicted of racketeering in organized labor management

fraud. We developed the legislation after extensive investigations by the Permanent Subcommittee on Investigations of alleged corruption on the Nation's waterfronts. Those investigations involved hours in preparation, hours in hearings, hours in study, and then hours spent in bringing together the varying views of the parties concerned with this problem. It should be noted that Lane Kirkland, the head of the AFL-CIO, endorsed last year's bill, as well as the members of the teamsters pension fund and the head of the teamsters pension fund.

The administration joined with the AFL-CIO in supporting this piece of legislation that would stiffen penalties for racketeering in organized labor management and fraud in handling union pension funds. This is the first time a major union and the administration have jointly supported such a measure.

The critical need for a remedy to the problem cannot be questioned. The evidence presented during the course of the subcommittee's investigations was disturbing to those of use who are concerned with the continued survival of our free enterprise system.

Indeed, the severity of the violations uncovered, including extortion payoffs, kickbacks, obstruction of justice, and violations of the Taft-Hartley Act, is startling. The subcommittee's latest round of hearings on the problem heard from witnesses who testified that the large network of ports in the United States is controlled by organized crime. Payoffs are occurring with such regularity that they are considered a part of everyday expenses which, in turn, are passed on to the consumer. We heard of payoffs to insure the award of work contracts, to maintain contracts already awarded to insure labor peace, and to expand business opportunities to new ports. The list goes on and on. I was especially disturbed by the evidence of criminal extortion and illegal payoffs in the south Florida area. The subcommittee conducted a thorough and alarming examination of waterfront corruption in that area, particularly at the Port of Miami. The practice of payoffs and illegal kickbacks appeared to be widespread and increasingly acceptable among waterfront businessmen and labor leaders.

Apparently, the recent growth of the Port of Miami into a major shipping center was accompanied by increasing efforts by organized crime to illegally manipulate waterfront businesses in that area.

Mr. President, the evidence uncovered by the Permanent Subcommittee on Investigations vividly depicts the need for a legislative remedy to these problems. I believe that this bill is just the vehicle required to stem corruption on the Nation's waterfronts and to adequately punish those involved in breaking the law. The bill would make violations of the Taft-Hartley Act of $1,000 or more a felony and punishable by up to 5 years imprisonment, and/or a fine of up to $15,000. Currently, such violations are only a misdemeanor subject to a fine of up to $10,000 and/or imprisonment of just 1 year.

The bill would also provide for the removal from labor unions and employee benefit plans the influence of persons convicted of criminal offenses. Union officials convicted of violations against Taft-Hartley would be suspended immediately. The ban against a convicted official holding a union office would be increased from 5 to 10 years. It has been an all too common practice for convicted officials to continue as trustees controlling the purse-strings of employee pension funds while their appeal drags through the judicial system for years. Ironically, they are in a position to continue the abuses they have been convicted of, which is often the case. I think it is crucial that we assure the millions and millions of persons who are depending on employee benefit plans for retirement that their funds will be wisely and legally invested, controlled and used by the individuals entrusted with the responsibility. And, we must assure the many workers of this country that the management of their unions are being directed by persons who have only the best interests of the workers in mind.

Finally, this legislation would make it clear that it is the responsibility of the Department of Labor to actively root out these abuses and to follow through on the referral of such cases to the Justice Department for prosecution. In the past, there has been a question as to whether or not it was the Department of Labor's authority to investigate alleged criminal violations. In most cases, this indecisiveness resulted in the criminal avoiding his day in court and, indeed, led some to believe that their activities could go on uninhibited.

Mr. President, in light of the volumes of evidence uncovered by the subcommittee, it is painfully obvious that corrupt practices on the waterfront have carried on for too long. I am happy to join with Senator NUNN in supporting what I believe to be a thorough and effective piece of legislation that would provide greater protection for unions and employee benefit plans from the corrupt practices of union and management officials. I urge my colleagues to join with me in supporting the Labor-Management Racketeering Act of 1983.●

● Mr. NICKLES. Mr. President, I am pleased today to be joining Senator NUNN and 11 other cosponsors in introducing the Labor-Management Racketeering Act of 1983. This same bill unanimously passed the Senate twice in the 97th Congress. It is the result of lengthy negotiations and has the support of the Department of Labor, the Department of Justice, and Lane Kirkland, president of the AFL-CIO.

Passage of this legislation will greatly benefit thousands of honest, hard-working people who depend on their labor-management leadership for the maintenance of their retirement funds. Recent convictions of a union president and an insurance company executive amplify the need for this protective legislation. I urge the House of Representatives not to let another session of Congress lapse without passing the Labor-Management Racketeering Act.

As chairman of the Labor Subcommittee, I have scheduled a hearing on March 15 on this legislation. I anticipate quick action by the subcommittee. I commend Senator HATCH as chairman of the Committee on Labor and Human Resources for his commitment to this bill and know that he will take the necessary steps to get the bill through the committee and onto the floor of the Senate as soon as possible. Again, I urge the House to take prompt, responsible action on this bill.

Thank you.●

Mr. HATCH. Mr. President, I am honored in joining my distinguished colleagues in introducing the Labor-Management Racketeering Act of 1983.

I would like to thank Senators NUNN and NICKLES for their aggressive pursuit during the 97th Congress of Senate approval of the Labor-Management Racketeering Act. I am confident that we will be able to work together again this Congress, as we did last year when this same bill passed the Senate unanimously. Special recognition also should be given to Senator KENNEDY, whose active participation on this bill is not only a tribute to him but also is evidence of the severity of the problem we are addressing and the inherent fairness of this legislation. The bill also will augment the recommendations President Reagan is making to combat organized crime.

The Labor-Management Racketeering Act of 1983 is designed to provide needed protection for union members and their health and welfare plans. It would strengthen the prohibitions against racketeering and increase the penalties found in the principal labor laws that regulate labor relations and employee benefit plans—the Taft-Hartley Act, the Landrum-Griffin Act, and ERISA.

For example, under the Senate bill, an individual convicted by a court of law of embezzling money from a union's pension plan would be barred from holding a union office for a period of 10 years. Similarly, an individual found guilty of extorting em-

ployer payoffs in exchange for labor peace would be barred from representing that union for a period of 10 years. Moreover, under the bill, any company official involved in this prohibited activity would be barred for an equivalent amount of time. The bill also prohibits union and management officials from continuing in office after their trial court conviction simply because they appealed those decisions.

With Senators NICKLES, KENNEDY, and myself all cosponsoring this legislation, we should be able to move it quickly through the Committee on Labor and Human Resources as well as the Senate. Senator NICKLES, chairman of the Labor Subcommittee, has scheduled a hearing on this bill for March 15, 1983. I personally will do all I can to move the bill through the full committee as expeditiously as possible.

It should be remembered that this same bill passed the Senate twice last year, only to be buried in the House of Representatives. I feel that the burden is really on the House in general and the Labor-Management Relations Subcommittee in particular to demonstrate their commitment to honest and equitable collective bargaining and a union movement worthy of its membership. The 22 million working men and women of this country who belong to labor organizations deserve no less.

● Mr. ROTH. Mr. President, I am pleased to add my support for the Labor-Management Racketeering Act of 1983.

Although this legislation was approved by the Senate in the 97th Congress, the bill was never acted upon in the House of Representatives. As a result, the sponsors of this legislation find it necessary to introduce it once again in order to bring the issue to the attention of the House membership and to obtain full congressional approval.

Numerous hearings by the Permanent Subcommittee on Investigations, which I now chair, have underscored the fact that congressional efforts to end the domination of certain unions by organized crime and other criminal elements have not been entirely successful. Current Federal prohibitions and penalties designed to protect the legitimacy of labor unions have, to a certain extent, proven to be inadequate. For instance, we have shown that many individuals in the International Longshoreman's Association who have been convicted of serious Federal offenses maintained their positions of power long after their conviction.

The problem with allowing convicted union leaders to retain their positions of fiduciary responsibility is well illustrated in the story of Bernard Rubin, official in the Laborers Union in Florida. Convicted in the mid-1970's of embezzling union funds, Rubin retained his union position while appealing his conviction. It was later learned that, during the interim, Rubin had continued to pilfer union moneys.

The need for action on this legislation was further emphasized by the conviction of Teamsters Union President Roy Lee Williams. Williams, together with his four codefendants, was convicted of conspiracy to commit bribery, traveling interstate in the furtherance of a bribe and various charges of scheming to defraud the Teamsters Central States pension fund. Despite these convictions, however, neither Williams nor the two officials of the pension fund convicted with him will be forced to resign their positions with the union until all avenues of appeal have been exhausted.

The Permanent Subcommittee on Investigations is currently conducting an extensive investigation to determine the degree to which organized crime has been able to infiltrate and control the International Hotel Workers Union and its larger affiliated locals.

Although we have not yet completed our investigation of the international union, we have uncovered a starting pattern of infiltration and control of several of its locals.

This is intolerable, and it is compounded by the helpless situation of the honest rank and file members. We have heard testimony relating to the ruthless and violent methods used to discourage honest union members from challenging the control of their locals by criminals.

The time has come for Congress to take decisive steps toward ridding the unions of the stranglehold imposed by criminal elements. Congress must take these steps in order to safeguard the workers of this Nation and to insure that money for benefits to which they are entitled is in fact used for its intended purpose.

In addition, this legislation will clarify the responsibility of the Secretary of Labor to investigate civil and criminal violations of the Federal pension laws and related statutes.

I urge my colleagues to join with me in support of this legislation.●

By Mr. PACKWOOD (for himself, Mr. MOYNIHAN, Mr. DURENBERGER, and Mr. HEINZ):

S. 337. A bill to amend the Internal Revenue Code of 1954 to make permanent the deduction for charitable contributions by nonitemizers; to the Committee on Finance.

DEDUCTION FOR CHARITABLE CONTRIBUTIONS

● Mr. PACKWOOD. Mr. President, the Economic Recovery Tax Act of 1981 contained an amendment proposed in the Senate by Senator MOYNIHAN and me to allow nonitemizers to deduct charitable contributions. Today Senators MOYNIHAN, DURENBERGER, HEINZ, and I are introducing a bill to make permanent the 1981 amendment. This new deduction was enacted in 1981 as an integral part of the effort to encourage the delivery of services by the voluntary sector.

As enacted in 1981, the new deduction phases in slowly. Specifically, for 1982 and 1983 the maximum charitable contributions deduction for nonitemizers is $25 (one-fourth of contributions, up to $100); for 1984, the maximum deduction is $75 (one-fourth of contributions up to $300); and for 1985, one-half of contributions with no dollar limit. Not until 1986 can nonitemizers deduct all charitable contributions. At the end of 1986, the new deduction terminates.

The bill we are introducing today eliminates the termination date. We are introducing the bill now because of the importance of making this tax incentive a permanent part of the law of the land.

The people of our Nation are blessed with hundreds of thousands of community-based nonprofit organizations. I believe there is no question about the value of these organizations, both to the millions of recipients of their services and to the millions of volunteers who staff them.

But, unfortunately, there is question about the ability of these groups to survive. The financial hurdles facing them are overwhelming. Federal budget cuts for human services and other areas have cut funding for federally assisted services administered through nonprofit organizations by billions of dollars. Also, income and estate tax reductions in 1981 diluted existing tax incentives for voluntary contributions, leading to billions more in lost funds.

The 1981 amendment to allow all taxpayers to deduct charitable contributions will partially offset these losses. As this new law is phased in it will encourage contributions critical to the maintenance of services and programs in every community in the Nation.

This deduction is important to those charities that depend on small contributors. There may have been a time that charities could depend on the very generous contributions of a few wealthy people. If those days were ever here, they are gone now. Today we need to encourage the small contributor to help. And I believe they will respond.

Mr. President, I request unanimous consent that the text of the bill be inserted in the RECORD following these remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 337

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sub-

section (i) of section 170 of the Internal Revenue Code of 1954 (relating to the rule for nonitemization of deductions) is amended by striking out paragraph (4).●

● Mr. MOYNIHAN. Mr. President, I rise today with Senator PACKWOOD to propose legislation to eliminate the sunset provision of the law introduced last year by myself and Senator PACKWOOD, that permits all taxpayers to deduct their charitable contributions whether or not they itemize their other deductions.

Under the legislation we introduced last year, taxpayers who do not itemize their other deductions can deduct their charitable contributions. This was responsible legislation, approved by an overwhelming majority of the Congress. Under this law, taxpayers can deduct 25 percent of their charitable contributions of up to $100, in the 1982 and 1983 tax years; from that point the amount and percentage rises at a gradual rate. In 1984, nonitemizing taxpayers can deduct 25 percent of their contributions of up to 300; in the 1985 tax year, the percentage rises to 50 percent and the upper limit is eliminated. Finally, in the 1986 tax year, nonitemizers can deduct all of their charitable contributions, without limit—just as can those taxpayers who do itemize.

This is fine and good. It is equitable, and it responds to a need recognized by both parties: the need to support our charities in the most effective way possible. But Congress attached a sunset provision to this legislation last year. Having risen to 100 percent of all contributions in the 1986 tax year, the provision is entirely eliminated in the 1987 tax year. Our current legislation would delete this sunset provision. The legislation introduced today by Senator PACKWOOD and myself would establish, as a permanent part of the Nation's tax law, the right of taxpayers who do not itemize to deduct their charitable contributions.

All the considerations favoring the original legislation argue against the sunset provision, and consequently for the bill we offer today. And these considerations were recognized by members of both political parties. The 1980 Republican platform stated that, "we support permitting taxpayers to deduct charitable contributions from their Federal income tax whether they itemize or not." This was reiterated in a telegram that Ronald Reagan sent the National Conference of Catholic Charities on September 18, 1980, in which he stated:

> We support permitting taxpayers to deduct charitable contributions from their Federal income tax whether they itemize or not.

Mr. President, this provision was not political. It reflected the widening appreciation by the American people of the unique and vital role played by private, nonprofit organizations and the importance of devising public policies that succor and sustain them and the charitable impulse that undergirds them. It also reflected a mounting wariness toward Government monopoly and toward the enrichment of the public sector as the private is diminished.

This appreciation, and this wariness, will not suddenly disappear in 1987, the time when under the current sunset provision the legislation Senator PACKWOOD and I introduced last year, with the support of the Republican platform and Mr. Reagan, would lapse.

This is not a small, technical tax matter. It is an issue that speaks to major currents in American history, the basic relations and balance between the public and private sectors of our society.

Return for a moment to a period of extraordinary intellectual ferment, just before the great crises of our century: The World Wars, the Depression, the rise of totalitarianism. Social and political thought was deadlocked in a conflict between two powerful schools. On one hand stood the classical liberals, who asserted the sovereignty of the individual, and looked with skepticism upon most forms of collective human enterprise.

On the other hand, emerging from continental traditions both of socialism and conservative absolutism, stood the statists. They feared that such individualism would lead to the disintegration of society—reducing humanity, in Durkheim's powerful phrase, to "a dust of individuals."

In response to this dichotomy, a third tendency began to develop, a tendency that owed much of its strength to the Anglo-American experience. It was called pluralism. While it is not properly regarded as a school of political thought, its exponents stood more to the democratic left than to the right. Among them were English figures such as R. H. Tawney, C. D. H. Cole, and the young Harold Laski.

The pluralists challenged both the absolute sovereignty of the individual and the sovereignty of the corporate state. They argued that between the individual and the state were to be found a great array of social and economic entities. They believed that in the strength of these voluntary, private associations—church, family, club, trade union, commercial association—lay much of the strength of democratic society. Such ideas had considerable resonance here. For as deTocqueville observed a century and a half ago:

> In no country in the world has the principle of association been more successfully used, or more unsparingly applied to a multitude of different objects, than in America.

One ought not be smug about this, for voluntarism as it developed on this continent traces its roots to the other side of the Atlantic. In Britain especially private charity had assumed vast proportions by the mid-19th century. As Prof. Calvin Woodard of the University of Virginia notes, in 1871 appropriations for the entire Royal Navy totaled 9 million pounds, while the collections and disbursements of the London charities came to 8 million pounds.

On these shores, the pluralist temper influenced the thoughts of Theodore Roosevelt and the progressive movement. And it can be heard distinctly in this passage from a speech that Woodrow Wilson delivered a few weeks before his election in 1912.

> If I did not believe that monopoly could be restrained and destroyed, I would not believe that liberty could be recovered in the United States, and I know that the processes of liberty are the processes of life.

Wilson was indulging in a bit of uncharacteristic hyperbole, for liberty did not need to be "recovered" in the United States. It had never vanished. It is important to recall, however, that the monopoly of which he spoke was private sector monopoly, business monopoly. As I said at Skidmore College in May 1978:

> The public life of Wilson's time was much absorbed with fear and detestation of private monopoly, and great chunks of political and social energy were consumed in devising strategies for controlling it. While this was not an easy undertaking at the time, the means were at least conceptually at hand. For the public sector itself—along with public regulation—offered a clear alternative to the private sector and one obviously responsive to public policy. Whereas it is impossible to enact a statute to create a private institution, it is a relatively simple matter to establish public ones and to restrain the activities of private counterparts. In the process, the public sector became powerfully associated with social progress and with liberalism generally perceived.

Then came the cataclysms of our century—wars and economic crises which appeared to require a centralization of public authority and an expansion of public services far beyond anything previously envisioned. In that context, the pluralists' ideas seemed cautious, deliberate, almost effete. Those seeking to meet social needs that individualism could not provide for turned more and more to the public sector, to the state, and away from the realm of private, voluntary associations.

To be certain, the results were salutary for the society. The result is an irreplaceable set of common provisions for the needy, the aged, and the sick. But we are reaching a point at which it begins to be necessary to consider policies which will maintain a sound balance between our private and public spheres. As I further remarked at Skidmore, recalling Wilson's injunction against monopoly:

With its continuing expansion, the public sector commences to displace the private, and to display some of the qualities of an enterprise that desires monopoly control.

Today, we begin to glimpse some questionable side effects of our mounting reliance upon Government. We see it, I believe, in such diverse phenomena as the unsteady condition of the family and the erosion of private education. We also see it in the faltering pace of our economic productivity and the cool impersonality that touches so many Government agencies. And if some in political life still do not see it, or will not see it, it appears that the public sees it, and is beginning to act upon that perception.

Is this a movement of selfishness, miserliness, or public lapse into what has been described as "degraded hedonism"? I think not. More likely, we are witnessing a generalized discontent with the vastness, waste, and unaccountability that now characterize much of the Government. Here then, is the larger argument for the incentives to private giving that our proposal would make permanent.

But let it not be thought that our proposal embodies a simplistic reaction against Government or the political process. On the contrary, I believe that our politics and Government would be strengthened by renewed vigor in the voluntary sector. The relative decline of that sector has been accompanied, not by a rise in the prestige and competency of Government, but by the reverse. I am prepared to believe that the two can prosper alongside one another. Indeed, neither can serve us well without the other.

DeTocqueville understood this, as he did so many things:

A government can no more be competent to keep alive and to renew the circulation of opinions and feelings amongst a great people than to manage all the speculations of productive industry. No sooner does a government attempt to go beyond its political sphere and to enter upon this new track, than it exercises, even unintentionally, an insupportable tyranny; for a government can only dictate strict rules, the opinions which it favors are rigidly enforced, and it is never easy to discriminate between its advice and its commands . . . governments therefore should not be the only active powers: associations ought in democratic nations, to stand in lieu of those private individuals whom the equality of conditions has swept away.

We seek in this legislation to reestablish in a permanent way the fundamental principle that underlay the charitable deduction when it was written into the Internal Revenue Code in 1917. This is the principle that money given by an individual to charitable purposes is money that should not be taxed.

The principle is clear enough. What has been less well understood is its gradual erosion as the zero bracket amount has been increased and as taxpayers have found it advantageous not to itemize.

The effects have been felt by individuals, whose economic incentive to give to charity has been eroding. And the effects have been felt by charitable organizations whose donated income has been eroding.

Charitable giving, as a percentage of personal income, declined from 1.99 percent in 1970 to 1.90 percent in 1979. As each one-hundredth of 1 percent of personal income is equal to approximately $200 million, this decline means that total charitable giving in 1979 was some $1.8 billion less than it would have been if the levels of giving of just 9 years earlier had been maintained.

Last year, our legislation restored the charitable deduction's original character, and again made that deduction available to all taxpayers. This year, our legislation will make this restoration permanent.

This could result in a tax reduction for millions of low- and middle-income families, and in increased charitable giving that would significantly exceed the attendant revenue loss to the Federal Treasury. Martin Feldstein, one of this Nation's most distinguished economists and now the President's Chief Economic Adviser, has estimated that if this deduction had been available in 1975, charitable contributions would have been $3.8 billion greater than they in fact were, at a cost to the Federal Treasury of about $3.2 billion.

The fundamental rationale for our legislation is familiar to every American as a basic principle of federalism: That the National Government should assume only those responsibilities that cannot satisfactorily be carried out by the States, by the localities, and by the myriad private structures and organizations, both formal and informal, that compromise this society. Structures that include the family itself, the neighborhood, the church, and the many private nonprofit agencies to be found in every community in this land.

This issue is familiar to Americans as an aspect of federalism.

Consider the interpretation offered by Jacques Maritain, this century's foremost Thomist, in "Man and the State," published in 1951. Maritain refers to a "process of perversion" which occurs—

when the State mistakes itself for a whole, for the whole, of the political society, and consequently takes upon itself the exercise of the functions and the performance of the tasks which normally pertain to the body politic and its various organs. Then we have what has been labelled the paternalist State: the State not only supervising from the political point of view of the common good (which is normal), but directly organizing, controlling, or managing, to the extent which it judges the interests of public welfare to demand, all forms—economic, commercial, industrial, cultural, or dealing with scientific research as well as with relief and security—of the body politic's life.

The "Paternalist State" has obvious manifestations, as when Government commences to engage in activities previously handled by nongovernmental organizations and begins to provide services formerly provided by the private sector.

Many of these activities and services are not only proper but essential to the satisfactory functioning of a just social order. One cannot, for example, readily imagine cash assistance to the poor, the unemployed, the elderly, and the disabled being provided as a matter of right other than by the state.

There is a more subtle manifestation of the absorption of the private sector by the public that is all the more worrisome because it is less noted. I refer to the gradual submersion of private organizations that occurs as they become dependent on the state.

Consider the consequences. Independence is eroded. Autonomy is undermined. Sovereignty diminished. The actions of the state become more important. The decisions of the state become more determinative. The ability to pursue objectives that the state does not share—in ways cannot share, perhaps should not share—is curbed.

The purpose of the "above the line deduction" is to redress the balance a little. It may not reverse the powerful historic trends but it will slow them. It will restore a little more independence to the voluntary sector. It will add a bit to the ability of the ordinary working man or woman to determine how, and on what, some of his or her money is spent.

It will in some small measure retard the process that has been described as the slow but steady conquest of the private sector by the public. It will enhance the ability of voluntary organizations to fill some of the void created by the constraints on Government activity that contemporary economic conditions dictate, and that contemporary political trends increasingly demand.

It will enhance the abilities of religious charities, of the ASPCA, of the Audubon Society, of universities, museums, and thousands of private nonprofit institutions and organizations to enhance the lives of millions of individuals. I believe this is worth doing.

Having said all this—having made the case last year and won the support of Congress—Congress having passed the essential provision last year permitting nonitemizing taxpayers to deduct their charitable contributions, can we continue to permit a 1987 sunset provision to hang over this legislation?

Now is the time to assure our charities that the Congress will not of a sudden withdraw the lifeline extended last year. Let us proceed expeditiously on this matter, in recognition of the

basic principles of our history and political culture.●

By Mr. COHEN (for himself, Mr. ROTH, Mr. LEVIN, Mr. RUDMAN, Mr. PERCY, Mr. DURENBERGER, Mr. PRYOR, Mr. PROXMIRE, Mr. HEINZ, and Mr. MITCHELL):

S. 338. A bill to revise the procedures for soliciting and evaluating bids and proposals for Government contracts and awarding such contracts, and for other purposes; to the Committee on Governmental Affairs.

COMPETITION IN CONTRACTING ACT OF 1983

Mr. COHEN. Mr. President, today, I am reintroducing the Competition in Contracting Act, which is designed to increase the use of competition in Government contracting and to impose more stringent restrictions on the awarding of noncompetitive—sole-source—contracts. This legislation was reported unanimously by the Governmental Affairs Committee last October, but the Senate was unable to complete action on it before adjourning. I am pleased to have Senators ROTH, LEVIN, RUDMAN, PERCY, PRYOR, PROXMIRE, HEINZ, DURENBERGER, and MITCHELL as cosponsors.

Competitive procurement, whether formally advertised or competitively negotiated, is beneficial to the Government. The Competition in Contracting Act recognizes that competitive contracting takes more than one form and establishes an absolute preference for competition in the Federal procurement statutes. The legislation safeguards against unnecessary sole-source contracting by providing limited conditions under which agencies are permitted to contract noncompetitively and by requiring agencies to publicize prospective contracts to flush the marketplace for potential competitors. As a final check on noncompetitive contracting, the bill establishes an advocate for competition and strengthens the recording and reporting requirements.

Under our current contracting laws, Government agencies are required to promote the use of full and free competition in the procurement of property and services. In Government contracting, competition is a marketplace condition which results when several contractors, acting independently of each other and of the Government, submit bids or proposals in an attempt to secure the Government's business.

It is important to understand that competition is not a procurement procedure, but an objective which a procedure is designed to attain. Currently, formal advertising is the preferred procurement procedure, with negotiation authorized by prescribed exceptions. Despite this preference for competition through formal advertising, however, negotiated contracts account for the vast majority of Government procurement dollars. Negotiated contracts can be competitive—and the legislation recognizes and encourages competitive negotiation when it is the appropriate contracting method—but more than half of all negotiated contracts are sole-sourced. According to figures released last week by the Federal Procurement Data Center, $79.2 billion of the $146.9 billion spent on property and services over $10,000 in fiscal 1982 was negotiated noncompetitively.

While not all Government contracts can be awarded competitively, too often agencies contract on a sole-source basis when competition is available. A July 1981 General Accounting Office (GAO) report, entitled "DOD Loses Many Competitive Procurement Opportunities," estimated that the Defense Department failed to obtain competition in awarding $289 million in new fiscal 1979 contract awards surveyed. Moreover, an April 1982 GAO report, entitled "Less Sole-Source, More Competition Needed in Federal Civil Agenices' Contracting," found that this problem was not confined to the DOD. According to this report, the six civil agencies reviewed, which awarded new sole-source contracts totaling $538.1 million, failed to obtain competition on an estimated 40 percent of their contract awards.

The benefits lost from awarding sole-source contracts which could have been competed are numerous. First, competition in contracting saves money. Studies have indicated that between 15 and 50 percent can be saved through increased competition. A 1979 study prepared by the Institute for Defense Analysis, for example, determined that the gross savings on unit prices of electronic and communications items sampled was 48 percent; for missiles and missile components, the average was 28 percent. More recently, the GAO reported, at Senator LEVIN'S request, the results of the competitive procurement for the T-3 tractor—a contract which initially was to have been awarded noncompetitively. The GAO found that the lowest bid in a competitive procurement for the T-3 tractor was 43 percent less than the cost of the contract had it been awarded on a sole-source basis.

In November 1982, the Congressional Budget Office estimated that significant savings could be achieved through the effective implementation of the Competition in Contracting Act. The CBO estimates that each 1 percent saved on new contract actions reduces costs by about $150 million per year. Since studies on the use of competitive contracting have concluded that potential savings range from 15 to 50 percent, a conservative estimate of the savings resulting from this legislation would be well over $1.5 billion.

In addition to potential cost savings, agencies have been able to promote significant innovative and technical changes through negotiated competition for contract awards. In some cases, competition may initially be more expensive, as in dual-sourcing, but the long-term result is frequently a better product, a stronger industrial base, and, according to Dr. Jacques Gansler, an average cost reduction of 30 percent.

The last, and possibly the most important, benefit of competition is its inherent appeal of fair play. Competition maintains the integrity in the expenditure of public funds by insuring that Government contracts are awarded on the basis of merit rather than favoritism.

The Governmental Affairs Committee and its Subcommittee on Oversight of Government Management have devoted considerable attention to this problem during the past two Congresses. The Competition in Contracting Act would provide a new statutory framework which would rectify the two primary shortcomings in the procurement statutes identified by the committee: insufficient emphasis on competitive negotiation as a legitimate procurement procedure and inadequate restrictions on the use of noncompetitive negotiation. Effective implementation of this legislation would, first, increase the use of competition in contracting by permitting agencies to either formally advertise or competitively negotiate, whichever is most conducive to the conditions of the contract, and second, impose greater restrictions on the awarding of noncompetitive contracts.

EXPANDING COMPETITION

The formal advertising requirement in present law is intended to keep the system honest and to secure the most advantageous contract for the Government. As long as the Government is purchasing property or a service which is fairly common, formal advertising works well and is most appropriate. For more complex procurements, contracts cannot reasonably be awarded solely on the basis of price without discussions with the offerors. In these circumstances, negotiation affords the best opportunity to obtain competition.

The emphasis on formal advertising, however, results in excessive justification requirements for the use of negotiated procurements. If contracting officers need to consider factors other than price in making awards, or wish to have any discussions with prospective contractors, they must satisfy one of the statutory exceptions that permit negotiation. For all practical purposes, therefore, competitive negotiation lacks recognition as a bona fide competitive technique.

Our legislation removes the restriction on competitive negotiation, thus eliminating the time-consuming determinations and findings statement, and

places it on par with formal advertising. Together, they constitute competitive procedures, with exceptions provided for noncompetitive procedures. The objective, conceptually, is to establish an absolute preference for competition, and, practically, to provide more flexibility in contracting. William Long, Deputy Under Secretary for DOD Acquisition Management, testified last year at a Government Affairs hearing that this new approach to competitive procurement best represents the real procurement world.

Under the Competition in Contracting Act, agencies are not only required to obtain competition, but to increase its effectiveness. Agencies would be required to make an affirmative effort to obtain effective competition through advance procurement planning, market research, and the development of specifications which are not restrictive of competition. We recognize that this extensive an effort may not be cost effective for small purchases. Therefore, this legislation provides a basis in statute for regulations to establish separate small purchase procedures for procurements under $25,000, which would allow agencies to scale down their efforts as long as they obtained reasonable competition.

RESTRICTING SOLE-SOURCE PROCUREMENT

The procurement statutes authorize negotiated procurement, but restrict its use to 17 conditions for defense contracts and 15 conditions for civilian contracts. To control its use, many of the exceptions require a written justification and some also the approval of the agency head. While agencies are required to award negotiated contracts competitively to the maximum extent practicable, negotiation can be—and frequently is—noncompetitive. Beyond the justification for negotiated procurement, however, present law does not require further justification for noncompetitive award.

Due to this lack of direct restriction on noncompetitive contracting, the exceptions to formal advertising in present law are often used inappropriately to justify sole-source procurement, rather than negotiation. The justification most frequently invoked is the competition is impracticable exception—an enormous loophole. The use of such broad exceptions to formal advertising as a means to sole-source contract conceals in the true reason for awarding a contract noncompetitively.

Under its proposed statutory framework, our legislation provides six exceptions to competitive procedures which permit agencies to use noncompetitive procedures in awarding a contract when competiton is not possible. In doing so, the bill shifts the emphasis from having to justify negotiation, as is presently required, to having to justify noncompetitive procurements. The intent is to place greater restrictions on the use of noncompetitive procurements without precluding its use when necessary. Awarding a contract on a sole-source basis would for the first time constitute a clear violation of statute unless permitted by one of the six exceptions.

This legislation would permit sole-source contracting only under the following conditions: First, the property or service is available from only a single source and no competitive alternatives are available; second, the agency's need is of such urgency that the Government would be seriously injured by the delay involved in using competitive procedures; third, the Government needs to award the contract to a particular source in order to create or maintain an essential industrial capability or for purposes of industrial mobilization; fourth, the terms of an international agreement require a noncompetitive contract; fifth, a statute requires that the procurement may be obtained through a specified source, or sixth, disclosure to more than one source of the property or service to be obtained would jeopardize the national security.

These six exceptions parallel the conditions under which the Comptroller General has historically permitted agencies to award on a sole-source basis. Even in these situations, however, I feel there should be a double-check for potential competition before the sole-source award is made. This legislation would generally require agencies to publish a notice of their prospective contracts in the Commerce Business Daily 30 days prior to the date set for the receipt of bids or proposals. The objective is to alert contractors, who may be capable of meeting the agency's needs but would have otherwise not known of the contract, to submit offers. In this manner, the legislation further safeguards against sole-source contracts when competition is available.

To facilitate oversight of noncompetitive contracts, the Competition in Contracting Act also requires agencies to maintain a record, by fiscal year, identifying all sole-source procurements. As proposed by Senator PRYOR, an advocate for competition in each procuring agency would be responsible for reporting the opportunities to achieve competition and any conditions which could potentially restrict competition. These new recording and reporting requirements would allow the Congress, the Office of Federal Procurement Policy, and senior agency officials to evaluate the progress of each agency in increasing the use of competitive contracting.

The Competition in Contracting Act builds on existing statutes to enhance the use of competition in Government contracting and to restrict sole-source award to only those cases where it is truly warranted. Within the new statutory framework, the evaluation and award procedures would be the same as those currently required for formal advertising and negotiation. Considering the history of Comptroller General and court decisions which have interpreted the present evaluation and award procedures, and, more significantly, the familiarity which results from over 30 years of experience, I am confident this legislation can be quickly and easily implemented. I strongly believe that the Competition in Contracting Act sets forth a workable solution to the costly problem of excessive sole-source contracting.

I ask unanimous consent that a section-by-section analysis of my legislation, as well as the Congressional Budget Office savings estimate, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD as follows:

SECTION-BY-SECTION ANALYSIS

SHORT TITLE

The short title of this bill is the Competition in Contracting Act of 1983.

Title I: Amendments to the Federal Property and Administrative Service Act of 1949 (41 U.S.C. § 251 et. seq.)

I. Competition Requirements

A. Competitive Procedures: Section 101 amends section 303 of the Federal Property and Administrative Services Act (41 U.S.C. § 253) by striking the requirements for formal advertising and inserting the following requirements for using competitive procedures to obtain effective competition.

Section 303(a), as amended, establishes as congressional policy that competitive procedures are required to be used whenever possible in awarding federal contracts for property or services. Executive agencies would be permitted to invite sealed bids and make award without discussion (formal advertising) or request competitive proposals and make award with discussion (competitive negotiation), which-ever is more conducive to the conditions of the contract.

Section 303(a) facilitates the use of competitive procedures by requiring that executive agencies utilize advance procurement planning and market research. Agencies would also be required to specify their needs and solicit bids, proposals, or quotations in such a manner as is necessary to obtain effective competition.

Section 303(b) authorizes the use of dual-sourcing when it would increase competition and likely result in the reduction of overall costs, or when it would be in the interest of industrial mobilization in the event of a national emergency.

Section 303(c) provides a basis in statute for establishing simplified procedures and forms for small purchases. A dollar ceiling of $25,000 for small purchases is set in section 309(e).

Section 303(d) establishes criteria, for other than small purchases, to determine which competitive procedure—sealed bid or competitive proposal—would be most appropriate for the procurement. Subsection 303(d)(1) directs an agency to use sealed bids when (1) there is sufficient time, (2) the evaluation factors can be assessed objectively, (3) discussions are not necessary, and

(4) there is a reasonable expectation that more than one sealed bid will be submitted. Subsection 303(d)(2) establishes that competitive proposals will be used as the method of acquisition when the criteria for sealed bid procedures are not met.

B. Noncompetitive Procedures: Section 101 further amends section 303 by adding new provisions that would make the award of a noncompetitive contract a clear violation of statute unless permitted under one of the prescribed exceptions. Section 303(e) provides six exceptions to competitive procedures which permit executive agencies to use noncompetitive procedures in awarding a contract.

Subsection 303(e) establishes as the first exception that executive agencies are permitted to use noncompetitive procedures when the property or services needed by the government are available only from a single source and no competitive alternatives are available. This exception requires that the agency's purpose in undertaking a sole-source procurement is to satisfy its minimum needs.

The second exception (subsection 303(e)(2)) covers emergency situations in which the procurement must be placed in a shorter time than is possible under competitive procedures. An emergency would be a situation which threatens immediate harm to health, welfare, or safety.

The third exception (subsection 303(e)(3)) permits the use of noncompetitive procedure when it is necessary to award a contract to a particular source in order to achieve an essential industrial capability in the United States or to maintain national industrial mobilization.

The fourth exception (subsection 303(e)(4)) allows noncompetitive procedures to be used when required by international agreement or directed procurements for foreign governments when the cost is to be reimbursed by the foreign government.

The fifth exception (subsection 303(e)(5)) permits noncompetitive procedures to be used when a statute provides that the procurement must be obtained through a specified source.

The sixth exception (subsection 303(e)(6)) allows a noncompetitive procurement when disclosure to more than one source of the property or sources to be obtained would compromise the national security.

Section 303(f) precludes award on a noncompetitive sole-source basis unless the executive agency publicizes its prospective award in the Commerce Business Daily (CBD). Guidelines for publicizing in the CBD are provided in section 313(b).

II. Definitions

Section 101 amends the Federal Property and Administrative Services Act (FPASA) by adding at the end of section 309 (41 U.S.C. § 259) the following new definitions.

"Executive agency" is defined in section 309(b) to include all government departments and establishments except for those military departments specified in the Armed Services Procurement Act (10 U.S.C. § 2303(a)).

"Competitive procedures" is defined in section 309(c) to mean those procedures under which an executive agency enters into a contract after soliciting sealed bids or competitive proposals from more than one source that is capable of satisfying the agency's needs. "Noncompetitive procedures" is defined in section 309(d) to include procedures other than competitive.

"Small purchase" is defined in section 309(e) as any purchase or contract which does not exceed $25,000. Section 309(e) precludes agencies from dividing a proposed purchase into several smaller procurements for the purpose of using small purchase procedures.

III. Solicitation Requirements

Section 101 amends the FPASA by adding after section 310 (41 U.S.C. § 260) the solicitation requirements for civilian procurements.

Section 311(a) establishes standards for drafting specifications. Executive agencies would be required to state their purchase specifications, which serve as the baseline for the evaluation of offers, in a manner which would permit effective competition. A second standard requires that agencies only include restrictive provisions or conditions in specifications to the extent necessary to meet their minimum needs.

Depending on the agency's needs and the market available to meet them, Section 311(a) permits agencies to state their specifications in terms of functional, performance, or detailed design requirements.

Subsection 311(b)(1) requires agencies to include in their solicitations for sealed bids and competitive proposals, in addition to a description of their needs, a list of the evaluation factors—including price—which are reasonably expected to have a significant bearing on the selection for award. Agencies also are required to indicate the relative order of the importance of these factors in the evaluation process.

Subsections 311(b)(2) and (3) require that agencies state in their solicitations how they intend to evaluate and award submissions—either with or without discussions. In the case of sealed bids, the statement includes information on the time and place for the opening of bids; for competitive proposals, the statement includes the time and the place for the submission of proposals.

IV. Evaluation and Award

Section 101 amends the FPASA by adding section 312 which establishes evaluation and award procedures for sealed bids and competitive proposals.

Section 312(a) requires that executive agencies evaluate sealed bids and competitive proposals based on the factors specified in the solicitation. Section 312(b) permits the agency head to reject all bids and proposals which are not in the public interest.

A. Sealed Bid Procedures: Section 312(c) sets forth the evaluation and award procedures for sealed bids. This section adopts provisions from the "Formal Advertising Requirements" section of current law (41 U.S.C. § 253). Sealed bids would be opened publicly at the time and place specified in the solicitation and would be evaluated without discussions with the bidders. In accordance with present procedures, furthermore, contracts would be awarded to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the government, price and other factors (included in the solicitation) considered.

B. Competitive Proposal Procedures: Section 312(d) establishes a framework for the conduct of competitive negotiations. Executive agencies would be permitted to discuss their requirements or the terms and conditions of the proposed contract with offerors after receipt of proposals and prior to the award of the contract. This section adopts provisions from the Armed Services Procurement Act (10 U.S.C. § 2304(g)), which require that military agencies conduct written or oral discussions with all responsible offerors in the competitive range, and extends it to apply to civilian procurements. The "competitive range" would be determined by the contracting officer based on price, technical, and other salient factors, and would include all proposals which have a reasonable chance of being selected for award.

Section 312(d) also provides that proposals need not be evaluated with discussions where it can be demonstrated from either the existence of effective competition or accurate prior cost experience that the acceptance of a proposal without discussion would result in fair and reasonable prices. If discussions are not held, the solicitation must have notified all offerors of the possibility that award could be made without discussions.

Award of the contract under section 312(d) would be made to the responsible offeror whose proposal is most advantageous to the government on the basis of price and other factors included in the solicitation. Agencies would be required to notify all offerors of the rejection of their proposals, at the time of rejection, and award the contract by giving notice to the responsible offeror.

Section 312(e) states that the head of an executive agency is authorized to refer any sealed bid he or she considers to be in violation of the antitrust laws to the Attorney General.

V. Procurement Notice

Subsection 313(a)(1) requires executive agencies to publish pre- and post-award notices in the Commerce Business Daily for competitive and noncompetitive procurements which exceed the small purchase threshold set in section 309(e). Subsection 313(a)(2) authorizes the Administrator of the Office of Federal Procurement Policy to lower the threshold for publicizing in the CBD if he or she considers it appropriate.

Section 313(b) sets forth the guidelines for publicizing pre-award notices. Executive agencies would be required to publish in the CBD for a period of at least 30 days before the date set for the receipt of bids or proposals. Section 313(b) also lists the information to be included in each notice: (1) a description of the property or services needed by the agency, which, as in the case of the purchase specification, should not be unnecessarily restrictive; (2) the name and the address of the contracting officer; (3) a statement that all submissions will be considered by the agency; and (4) in the case of noncompetitive procurements, the justification for going sole-source and the identification of the intended source.

Section 313(c) provides exceptions to the procurement notice requirement. Exceptions two through six for noncompetitive procedures (subsections 303(e)(2)–(6)) would apply to the notice requirement. The first exception, which permits agencies to use noncompetitive procedures when only one source is available and there are no competitive alternatives, would not be included in the exceptions to the notice requirement. In this case, the notice would be used to confirm the agency's finding or otherwise test the marketplace for potential competitors.

VI. Record Requirements

Section 314(a) strengthens the recording requirement for civilian procurements. Executive agencies would be required to establish and maintain a record, by fiscal year, of the procurements in which noncompetitive procedures were used. Section 314(b) specifies that the information in the record shall include the name of the contractor who re-

ceived the sole-source award, the property or services obtained, the dollar value, the reason for using noncompetitive procedures (pursuant to one of the six exceptions), and the position of the person or persons who required and approved the sole-source award. Agencies would also be required under section 314(a) to establish and maintain a record, by fiscal year, of all one-bid and one-proposal procurements in which competitive procedures were used. Records would be maintained for five years.

Section 314(c) requires that the information included in the records be transmitted to the Federal Procurement Data Center, which was established by the Office of Federal Procurement Policy Act (41 U.S.C. § 405(d)(5)).

VII. Cost and Pricing Data

Section 102 amends section 304 of the FPASA (41 U.S.C. § 254 by adding the following provision for cost and pricing data.

Section 304(d), as adopted from the Armed Services Procurement Act (10 U.S.C. § 2306(f)), requires executive agencies to submit cost or pricing data which is accurate, complete, and current for negotiated contracts over $500,000. Cost or pricing data also would be required for modifications to contracts, subcontracts, and modifications to subcontracts in which the price (or price adjustment in the case of modifications) is expected to exceed $500,000.

Subsection 304(d)(2) gives the executive agency the right to adjust contract prices in order to compensate for information which was found to be incomplete, inaccurate, or out of date, and which resulted in a higher price, fee, or cost than otherwise would have occurred. In order to verify that the cost of pricing data submitted is accurate, complete, and current, subsection 304(d)(3) permits any authorized representative of the head of the agency to examine the contractor's books, records, and documents related to the contract. Subsection 304(d)(4) waives the requirements of subsection 304(d)(1) in those circumstances where negotiated contract price is based on adequate price competition, catalog or market prices, or is set by law.

VIII. Conforming Amendments

Section 103 amends the FPASA to conform to the new procedures and terminology provided in this Act.

Subsection 103(a)(1) amends section 302 (41 U.S.C. § 252) by removing the statutory preference for formal advertising and the 15 exceptions for negotiation. In its place, section 303, as amended, places competitive negotiation on par with formal advertising—competitive procedures—and provides exceptions to justify noncompetitive procedures.

Subsection 103(a)(2) amends section 304 (41 U.S.C § 254) by changing the heading from "Negotiated Contracts—Requirements." to "Contract Requirements." Subsection 103(a)(3) further amends this section by replacing all references to negotiated contracts with the phrase "[contracts] awarded using other than sealed bids procedures" to include competitively and noncompetitively negotiated contracts.

Subsection 103(a)(4) amends section 307 (41 U.S.C. § 257) by eliminating the determinations and findings process for negotiated contracts.

Subsections 103(a)(5) and (6) amend sections 308 (41 U.S.C. § 260) respectively by making conforming changes to language.

Title II: Amendments to the Armed Services Procurement Act of 1947 (10 U.S.C. § 2301 et seq.)

The amendments to the Armed Services Procurement Act (ASPA) parallel those amendments set forth in Title I to the Federal Property and Administrative Services Act.

I. Definitions

Section 201 amends section 2302 of the ASPA by adding the following new definitions:

Section 2302(1), as amended, extends the definition of "head of an agency" to include the Secretary, Deputy Secretary, Under Secretary, and Assistant Secretary of Defense. The definitions for "negotiate" and "formal advertising" provided in section 2302(2) and (3) are deleted. Definitions for "competitive procedures," "noncompetitive procedures," and "small purchase," as provided in Title I, are added.

II. Competition Requirements

A. Competitive Procedures: Section 201 amends section 2304(a) of the ASPA by removing the statutory preference for formal advertising and inserting requirements for competitive procedures.

Section 2304(b) authorizes the use of dual-sourcing when it would increase competition, or when it would be in the interest of industrial mobilization.

Sections 2304(c) and (d) establish regulations for small purchases and criteria for using competitive procedures.

B. Noncompetitive Procedures: Section 2304(e) sets forth six exceptions to competitive procedures which permit executive agencies to use noncompetitive procedures in awarding a contract.

Section 2304(f) precludes award on a noncompetitive, sole-source basis unless the agency publicizes its prospective award in the Commerce Business Daily.

III. Solicitation Requirements

Section 2305(a) provides the solicitation requirements for sealed bids, and competitive proposals, which include specification development.

IV. Evaluation and Award

Section 2305(b) establishes the evaluation and award procedures for sealed bids and competitive proposals.

V. Procurement Notice

Section 2305(c) requires agencies to publicize pre- and post-award notices in the Commerce Business Daily.

VI. Record Requirement

Section 2316 is added to strengthen the recording requirement for military procurements.

VII. Conforming Amendments

Section 202 amends section 2306 by making conforming language changes.

Section 2310 is amended to eliminate the determinations and findings process for negotiated contracts.

Title III: Advocate for competition

I. Definition

Section 201 defines "executive agency" as an executive department, a military department, and an independent establishment. This is presently the definition provided in section 4(a) of the OFPP Act (41 U.S.C. § 403(a)).

II. Advocate for Competition

Subsection 302(a)(1) establishes an advocate for competition in each executive agency. Subsection 302(a)(2) requires that the head of the agency designate an existing officer or employer of the agency as the advocate, relieve him or her from any conflicting duties and responsibilities, and provide the advocate with adequate staff.

Section 302(b) provides the advocate's responsibilities. Subsection 302(b)(1) states that the advocate's primary responsibility is to promote competition in the procurement of property and services. Specific responsibilities, listed in subsection 302(b)(2), include: reviewing the contracting activities of the agency, identifying and reporting to the head of the agency opportunities to achieve competition and conditions which could potentially be restrictive of competition, and issuing an annual report to the head of the agency on his or her activities.

III. Annual Report

Section 303 requires that the head of an agency transmit to the Senate Committee on Governmental Affairs and the House Committee on Government Operations an annual report of the actions to be taken by the agency to increase the use of competitive contracting and a summary of actions taken in the past year. The report is to be issued no later than September 30 of each year, for fiscal years 1983 through 1986.

Title IV: Notice requirements under the Small Business Act

Section 401 repeals section 8(e) of the Small Business Act (72 Stat. 389; 15 U.S.C. § 637(e)), which provides for notice and publication of procurement actions.

Title V: Applicability

Section 501 states that the amendments set forth in the Titles are to apply to civilian and military contracts entered into 180 days after the bill is enacted.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., November 15, 1982.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2127, the Competition in Contracting Act of 1982, as ordered reported by the Senate Committee on Governmental Affairs, October 1, 1982.

The bill revises procedures for awarding federal contracts for property and services, with the intent of increasing competition in government procurement. The potential savings from effective implementation of this legislation are substantial, but cannot be estimated with precision. Of $123 billion in contracts over $10,000 awarded in fiscal year 1981, $67 billion (54 percent) were awarded noncompetitively, with over 80 percent of these noncompetitive awards made by the Department of Defense. About $46 billion of the $67 billion in negotiated noncompetitive contracts awarded in fiscal year 1981 were for actions under existing contracts, and approximately $6 billion of the remainder were for procurements under the "Buy Indian" program and for follow-on awards after competition—leaving about $15 billion in other new contract actions.

Studies by the General Accounting Office and others have indicated that savings of 10 to 50 percent can sometimes be achieved through competitive contracting. While there is no reliable methodology available to estimate total savings from the bill, such savings could be significant, because each 1

percent saved on new contract actions would save about $150 million per year. Also, in the long term, the costs of modifications to existing contracts may also be reduced by the prospects of future competition.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

C. G. NUCKOLS
(For Alice M. Rivlin, Director).

Mr. COHEN. Mr. President, I intend tomorrow, or soon after as practicable, to ask unanimous consent that this matter be sequentially referred, first going to the Government Affairs Committee for hearings and, hopefully, action and then title X of this particular bill to be sequentially referred to the Armed Services Committee so that hearings may be held in that committee pertaining to the procurement in the Defense Department.

● Mr. LEVIN. Mr. President, I am pleased to join with Senator COHEN today in cosponsoring the Competition in Contracting Act of 1983. A bill similar to this was unanimously reported by the Governmental Affairs Committee last Congress, and it is to the great misfortune of the taxpaying public that it was not enacted into law. I hope we will be able to marshall the attention and enthusiasm of Congress this year to get that important job done.

I say this because I am convinced that this bill will accomplish two very important things: It will save the Federal Government large sums of money, and it will foster the growth and health of small business and industry which is so essential to our economy and our national defense.

I have become an advocate for competition in my 4 years in the Senate largely because I find the statistics compelling. Competition can reduce the cost of procurements anywhere from 10 percent to 25 percent to even 50 percent. I have seen it reduce the cost of a procurement in which I became personally involved by 43 percent—cutting the cost of tractors from over $1 million to just over $600,000.

The present procurement statutes lack clear congressional direction on the need for competition. They contain numerous exceptions to formal advertising, which are so broad in and of themselves that they are easily invoked, and, therefore, competition is readily avoided. Moreover, the current provisions for announcing Federal contract actions are totally insufficient. Complaints about the failures of the Commerce Business Daily, the publication used to publicize Federal contracts, abound. Contracts are awarded before bidders get the chance to submit their offers, or even request a copy of the solicitation.

This bill will require notice—in all but a very few contract actions—30 days before competition is foreclosed. That includes sole-source contracts, too, where the Government believes there is only one company that can perform the contract. This bill would require the Government to announce that decision in the possible event that there are other firms out there that the Government might be ignorant of, that would be able to perform the contract for a lower price and maybe with better performance.

We owe it to the American public and to American business to give everyone a meaningful opportunity to participate in Government procurement. In fiscal year 1981 we spent over $134 billion on procurement. That is an awesome amount of money that should be spent only in the most economical fashion. Even a 1-percent decrease in cost, as a result of procurement reform, would mean a $1.34 billion savings. As you can see, Mr. President, increased competition has the potential to have a significant impact on our Federal budget.

I want to commend Senator COHEN and his staff for their excellent work in drafting this bill. It is a thoughtful product that merits the support of each Member of Congress. I urge my colleagues to join us in cosponsoring this legislation.●

● Mr. ROTH. Mr. President, I rise in support of the Competition in Contracting Act of 1983. I am pleased to be an original cosponsor of the proposal and applaud Senator COHEN for his efforts in drafting this important piece of legislation. A similar bill was reported out of my Committee on Governmental Affairs late last year and I intend to move ahead very quickly to report this measure to strengthen the use of competitive practices in Government procurement practices.

The Competition in Contracting Act of 1983 would encourage greater levels of competition in Federal procurement and impose new restrictions on sole-sourcing contracts throughout Government. It would do this by changing the focus of the existing procurement statutes to distinguish between truly competitive contracts and those which are not awarded competitively.

Currently, the procurement statutes do not stress the competitive aspects of Government purchasing practices and instead focus simply on whether or not a particular contract was advertised or negotiated. While the use of advertising is very important in Government contracting, and remains the preferred method of procurement under our bill, it is not the only type of competitive contracting method available. Our bill will encourage broader use of other competitive contracting methods and stimulate greater levels of real competition in Government procurement. In addition, the bill greatly narrows the number of exceptions in current law to using competitive practices and also requires a procuring agency to publish advance notice of most larger contracts, even those the agency feels should not be competed, so that potential suppliers can place bids. This provision would act as a "double check" on the agency and encourage the marketplace to be used for a wider variety of contracts.

Mr. President, it is true that this bill would modify the procurement practices of all Federal agencies. However, I am particularly concerned about increasing the efficiency of procurement procedures in the Defense Department because that is where 75 percent of all procurement dollars will be spent next year. Real purchases of defense goods, including R&D and procurement of major weapons systems, will grow at an estimated rate of 16 percent annually under the President's budget between 1981 and 1987. This rate of growth exceeds the 14-percent annual rate of increase that occurred during the 3 peak years of the Vietnam buildup. Weapons system procurement and development, which totaled $48.9 billion in 1980, will reach a level of over $103 billion in the coming fiscal year. Clearly, with this magnitude of funding we must do everything possible to insure that our defense dollars are used effectively and purposefully.

My Committee on Governmental Affairs held 3 days of hearings in 1981 on the management of the defense acquisition process. We heard testimony from the administration indicating that it is trying to improve the effectiveness and reduce the costs of the procurement system. Then Deputy Secretary Carlucci assured the committee that a series of management initiatives he had developed would help to curb the costs of the procurement system and give the taxpayers more reason to believe that they are getting a cost-effective return on their tax dollar.

Yet, one problem for years has plagued the DOD in its efforts to improve the management of massive new weapons programs and that problem is the failure of the Department to encourage real competition in contracting. Some two-thirds of the value of all DOD procurements are noncompetitive, that is, not open to bidding or negotiation to all interested and qualified parties. Out of a total of $65 billion awarded by DOD in 1980, over $40 billion was negotiated without competition. In one study GAO reviewed 25 contracts that it believed should have been competed and determined that contracting officers did not make required reviews to assure that competition was impossible. In 70 percent of these cases the contracting officers placed contracts with companies their supervisors had suggested. It appears that DOD is running an auction without a caller and with only one participant who is admitted by special invitation only.

We need to insure greater competition in DOD procurement for several reasons, of which reduction in cost is just one. The fondness of DOD to sole source its goods and services may be having a serious effect on our military industrial base. The practice of sole sourcing may contribute to reducing the number of firms willing to bid on DOD projects by shutting out innovative smaller firms. For instance, only 25 firms currently hold approximately 50 percent of all defense contracts and only 8 firms conduct 45 percent of all defense research. Significantly, some 2,000 aerospace industry subcontractors disappeared from 1968 to 1975, many of them unique suppliers of critical defense components.

It is possible that excessive use of sole-source contracts by DOD was the final nail in the coffins of many of these contractors. By refusing to open up the DOD marketplace to competition, we may be forcing many companies to fold or refuse to contract for defense projects, thereby reducing further any opportunity for competition.

Costs too can be reduced through the use of competitive contracts by DOD. Some studies suggest that as much as 30 percent can be saved through the use of competition in the acquisition process. For example, one analyst has estimated that competition and lack of extensive "specs" saved $640 million on the procurement of specialized ammunition for the A-10 aircraft. The Defense Science Board found more than a dozen examples of competed contracts for weapons such as the AIM-7 missile and uncovered significant evidence of cost savings averaging nearly 15 percent. The DSB concluded that, "Competition is a powerful motivator for cost control."

Yet, with all of this evidence, DOD continually fails to use the forces of the marketplace to reduce costs. DOD claims that it is difficult to use competitive contracts in many cases and yet, as the Defense Science Board noted, there is "very little definitive evaluation by DOD on the real cost value of competition." In other words, DOD cannot stand the taste of the medicine it needs even though it has not tasted it very often.

Without competition in the acquisition process, there are few incentives on the part of the contractor or the DOD to reduce costs. DOD is helping to create a new "army,"one composed of a few select companies operating in the warm glow of a monopoly contract. There may be some rivalry during the initial phases of a contract award for research and development but frequently the contractors involved do not fight long enough to really challenge each other. In the end, one firm usually becomes the sole developer and producer of a weapon for a decade or more.

Competition in DOD programs is not the only cost-reducing technique available but it is one of the most important. Unnecessary costs in defense programs must be brought under control soon for the American people cannot be fooled for long. More dollars must not mean more unnecessary expenses. Congress has already begun scaling back the increases in defense spending originally proposed by the President. Without visible, effective, and lasting improvements in DOD's efforts to buy more weapons systems, the clamor for more defense cuts can only get louder.

I am confident the legislation we introduce today will begin the process of insuring more effective management of procurement by using the discipline of the marketplace to control costs. I look forward to working for the passage of legislation to enhance competition and I am pleased to join Senator COHEN in this initiative.●

By Mr. PROXMIRE:

S. 339. A bill to amend title IV of the Social Security Act to provide that States must require recipients of aid to families with dependent children to participate in community work experience programs if they are able to do so; to the Committee on Finance.

COMMUNITY WORK EXPERIENCE PROGRAMS

Mr. PROXMIRE. Mr. President, today I am reintroducing legislation which will require all ablebodied persons of working age—except mothers with small children—to work as a condition of receiving welfare.

When I first introduced my legislation back in March 1981, the use of workfare in the federally supported aid to families with dependent children (AFDC) was prohibited except on an extremely limited test basis. Workfare was operating successfully in a number of States, including Wisconsin, for recipients of locally funded general assistance.

The Omnibus Reconciliation Act of 1981 permitted, but did not require, States to enact workfare requirements for AFDC recipients.

Since then, there has been considerable interest and discussion of workfare, and some States have adopted workfare requirements.

Today, more than half of the States have some form of workfare requirement for either general assistance, AFDC, or both. Unfortunately, many of these programs are extremely limited and cover few of all employable recipients.

MANDATORY WORKFARE PLAN CAN WORK

The only legitimate objection I can imagine to a mandated workfare program, will come from those that will say: "Where are the jobs?" For more than 40 years, Milwaukee County has provided a resounding answer to that objection.

If Milwaukee County, one of the major metropolitan centers of this country, can do it through depressions and recessions, why cannot the whole country do it?

I have personally attended meetings where Milwaukee County officials assigned jobs to welfare recipients. What jobs? Cleaning the streets and parks, assisting policemen, helping clean and maintain public buildings. I have yet to see an American city anywhere which could not use a great deal of this cleaning up, fixing up, and supplementary police work.

These welfare recipients buy their own work clothes, pay for their own transportation to work and, in Milwaukee, earn less than minimum wage. But I heard few complaints. They were glad to get a job. And certainly the discipline of reporting to work regularly to earn their welfare check provided a discipline and a dignity that did them more good than harm.

The current legislation under the Omnibus Budget Reconciliation Act of 1981 is to provide experience and training for individuals, not otherwise able to obtain unemployment, in order to assist them in moving into regular employment. In other words, the community-work-experience programs, by giving people actual work experience and training, significantly increases the chances that the participants will move permanently from the welfare rolls to the work rolls.

The community-work-experience programs will serve useful public purposes in a variety of important fields, from health, social services, environmental protection, to public safety, and day care.

These programs have to meet appropriate standards for health and safety and cannot be used to displace currently employed people.

Participants are not required to work in excess of the number of hours which, when multiplied by the greater of the Federal or applicable State minimum wage, equals the sum of the amount of aid payable to the family.

Persons exempt from WIN registration would also generally be exempt from participation in this program, except that parents caring for a child under 6—but not under 3—could also be required to participate if child care is available.

Anyone refusing to work is excluded from the calculations made to determine the size of the family's welfare grant.

It is clear that the program exempts many AFDC recipients and protects them against being exploited in terms of wages, hours, and conditions of employment.

I have seen the operation of Milwaukee County's general assistance program which includes workfare, aggressive job counseling and job information supplied by the outstanding Wisconsin Job Service. And I can report,

in spite of some problems, it worked. Similar approaches involving general assistance and workfare have been basically successful elsewhere.

SAVE PART OF CURRENT $15 BILLION COST

How much of the $8 billion in Federal Government and the $7 billion of State and local money now budgeted for AFDC payments this year will be saved, I cannot say for certain; but I firmly believe that requiring participation in community-work-experience programs is a good place to start if we are to move in the direction of replacing welfare with workfare.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 339

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 409(a)(1) of the Social Security Act is amended by striking out "Any State which chooses to do so may establish" and inserting in lieu thereof "Each State having an approved plan under this part shall establish".

(b) Section 402(a) of such Act is amended—

(1) by striking out "and" at the end of paragraph (35);

(2) by striking out the period at the end of paragraph (36) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(37) provide that the State shall have in effect a community work experience program in accordance with section 409.".

SEC. 2. (a) Except as provided in subsection (b), the amendments made by the first section of this Act shall be effective with respect to payments under part A of title IV of the Social Security Act for calendar quarters beginning more than 180 days after the date of the enactment of this Act.

(b) In the case of a State plan approved under part A of title IV of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by the first section of this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

By Mr. MURKOWSKI:

S. 340. A bill for the acquisition by the United States by exchange of certain Native owned lands or interests in Alaska; to the Committee on Energy and Natural Resources.

EXCHANGE OF CERTIN ALASKA NATIVE LANDS

Mr. MURKOWSKI. Mr. President, I am introducing legislation that provides for the acquisition by the United States of Certain Native owned lands or interests in lands on Kodiak Island in Alaska. The bill I am submitting for Senate consideration is similar to the proposal submitted by my good friend, the Congressman from Alaska, DON YOUNG. This bill is virtually identical to the bill that we passed in the House last year and that which I introduced during the 97th Congress.

The bill would help resolve an unsatisfactory land ownership pattern that arises out of the way in which lands were apportioned between the United States and Alaska Natives under the Alaska Native Claims Settlement Act of 1971. The Claims Act helped resolve a conflict between Native interests in Alaska and the United States. But like most comprehensive solutions there were instances in which the overall solution either did not work or it did not work as it was anticipated.

I believe we have such a situation on the Kodiak Bear National Wildlife Refuge with the substantial selection of lands by the Koniag Native Corp.

The 1971 Native Claims Settlement Act required that the bulk of the lands to be conveyed to the Alaska Natives come from the areas surrounding the villages. However, in some instances this directive produced unacceptable results. Within the Kodiak National Wildlife Refuge there exist five native villages established by Executive orders in the 1940's. Therefore, the Claims Act required these villages to take all, or large portions of their land entitlements on the refuge.

As a result, the Native regional corporation on Kodiak Island, Koniag, Inc., now owns or is entitled to receive title to over 300,000 acres of land on that refuge. As a result, Koniag has become, if not the largest, certainly one of the largest inholders on any national wildlife refuge in the United States. The Natives, except for their immediate village areas, are unwilling inholders on the refuge. They would have preferred to take their entitlement elsewhere in locations where their economic objectives could be realized free of the inherent conflicts created by the existence of the wildlife refuge. It was a principal purpose of the 1971 Settlement Act to provide Alaska Natives with a land base which would give them the opportunity to achieve economic viability in the mainstream of American society. Inevitably, despite the best of intentions on both sides, the interests of the refuge and the Native corporation were bound to conflict.

Koniag and the Fish and Wildlife Service have for some time been exploring exchange possibilities. They have worked closely in the development of principles for the determination of the value for refuge purposes of Koniag's holdings under an exchange.

I am told that there are no apparently viable opportunities for an exchange which will fairly compensate the Natives for the surrender of their extensive holdings unless the search extends beyond available federally owned, onshore economically viable lands in Alaska. This is certainly a matter that would be extensively explored as the Senate Energy and Natural Resources Committee considers this legislation.

The Native corporation has proposed an innovative solution. In exchange for the conveyance back to the United States of lands and interests in lands within and adjacent to the refuge, they will receive "certificates of value" redeemable in bidding on competitive oil and gas lease sales, and in payment of rents and royalties on leases issued under the Outer Continental Shelf Lands Act.

The concept proposed by Koniag, though innovative, is not unprecedented. It is embodied in two recent acts of Congress. These are the Northern Cheyenne Indian Reservation Leasing Act (Public Law 96-401, October 9, 1980) and the Rattlesnake Recreation Area and Wilderness Act of 1980 (Public Law 96-476, October 19, 1980).

In each of these acts, in exchange for the conveyance to the United States of property interests—in those particular cases privately held mineral interests incompatible with retention of surface values—Congress provided that the owners would receive coal lease bidding right certificates.

Section 1302 of ANILCA authorizes the Secretary of the Interior to acquire Native inholdings within the boundaries of wildlife refuges and other conservative system units in Alaska—except for those in National Forest Wilderness—and to provide in exchange other lands or interests in lands owned by the Federal Government. Questions have been raised whether section 1302 encompasses exchanges that would be completed through the use certificates of value which in turn would result in issuance of OCS leases instead of by direct Federal conveyances of lands or interests in lands. In order to remove any doubt on that score, specific enabling legislation is desirable.

The issuance of certificates of value avoids the otherwise very difficult and time consuming task of determining the values of the specific mineral interests to be provided in exchange for the lands to be given to the Government. With certificates of value, the marketplace would determine the value of the mineral leases to be issued by the United States in completion of the exchange since the holder of the certificates of value would have to be the high bidder in order to receive such a lease. And, of course, the issuance of OCS leases, which would complete the exchange, would be subject to all environmental and other stipulations and requirements applicable to OCS leases.

Finally, by widening the circle of potential bidders, competition in the sale of OCS leases would be enhanced.

This is a new legislative proposal to help settle some of the unresolved problems created by the Alaska Native Claims Settlement Act. It also speaks to the future developments on the OCS leases. These are matters previously considered by the U.S. Senate.

Allow me to make it perfectly clear that I am not wedded to the exact language or proposals embodied by this legislation. This bill is a foundation on which to provide the Senate Energy and Natural Resources Committee a vehicle to review the proposal with respect to this specific problem. As we proceed with consideration, I feel we may find this proposal is the most viable one.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 340

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act is enacted to facilitate the achievement of the purposes expressed in section 101 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 16 U.S.C. 101 et. seq.).

SEC. 2. (a) In the event that Koniag, Incorporated, Regional Native Corporation ("Koniag") files with the Regional Director of the Fish and Wildlife Service, Anchorage, Alaska, one or more lists designating surface estate it owns or to which it is entitled pursuant to the Alaska Native Claims Settlement Act, as amended, situated within the exterior boundaries of the Kodiak National Wildlife Refuge ("Refuge") which Koniag is willing to convey to the United States pursuant to this Act, then the Secretary of the Interior ("the Secretary"), not later than one hundred and eighty days after Koniag files each such list, shall select therefrom surface estate aggregating at least 80 per centum of the acreage thereof and shall notify Koniag of such selection.

(b) Upon determination pursuant to section 4 of this Act of the value of the surface estate selected by the Secretary, Koniag shall convey the selected surface estate to the United States by quitclaim deed or deeds. Upon Koniag's conveyance to the United States, the Secretary shall issue to Koniag certificates of value ("certificates") in exchange therefor.

SEC. 3. Certificates issued under this Act may be tendered, and shall be accepted, as payment, in whole or part, of bonuses or other cash payments, or deposits, in competitive lease sales conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331, et seq.), and of rentals and cash royalties on leases heretofore or hereafter issued under that Act, until their total face value is thereby exhausted by payments under a successful bid or bids and by rental and royalty payments. The face value of certificates issued hereunder shall equal the value of the surface estate conveyed in exchange for their issuance. Receipt by Koniag of a certificate shall constitute receipt of an interest in land for purposes of section 21(c) of the Alaska Native Claims Settlement Act, as amended, and the face value of the certificate shall constitute its "fair value" for purposes of that section. Certificates issued under this Act shall be assignable in whole or part, but no assignment shall be recognized by the Secretary until written notice thereof is filed with him by the assignor and assigneees. Certificates may be tendered only by an entity qualified to bid and hold leases under the Outer Continental Shelf Lands Act.

SEC. 4. The Secretary and Koniag shall attempt, through negotiations, to reach agreement on the value of the surface estate which Koniag is to convey. In the event Koniag and the Secretary are unable to agree on such value within one year after each date on which the Secretary notifies Koniag of his selections (or at any such time prior thereto mutually agreed upon by the Secretary and Koniag) the determination of value shall be promptly submitted to binding arbitration in accordance with the rules of the American Arbitration Association. In the event selections are made by the Secretary from more than one list filed by Koniag under section 2, by mutual agreement of the Secretary and Koniag there may be a single submittal to binding arbitration, such submittal to be made not later than one year after the date on which the Secretary notifies Koniag of his selections from the list last filed by Koniag. Each member of the Board of Arbitrators shall be selected through utilization of the procedures of the American Arbitration Association: *Provided,* That such Board shall consist of three arbitrators, unless the Secretary and Koniag mutually agree to a lesser number. The decision of the Board of Arbitrators shall be final and conclusive. At any time prior to the announcement of a decision by the Board of Arbitrators, the Secretary and Koniag may mutually agree on value. In determining value of interests to be conveyed to the United States under this Act, primary consideration shall be given to their value for refuge purposes.

SEC. 5. Conveyances under this Act shall not affect subsistence uses of Koniag members and their families. A statement to that effect shall be included in all conveyances made pursuant to this Act and shall constitute a covenant running with the land. Nothing in this Act shall be construed to deprive Koniag members and their families of the subsistence rights provided for in title VIII of the Alaska National Interest Lands Conservation Act. By agreement with the Secretary, Koniag may retain interests in the nature of easements or right-of-way in, on, or across any surface estate conveyed to the United States under this Act. Any interests reserved under this section shall be exercised in accordance with such reasonable regulations as the Secretary may prescribe.

SEC. 6. In addition to the surface estate selected by the Secretary under section 2 of this Act, Koniag and the Secretary may from time to time agree that there shall be conveyed to the United States under and in accordance with this Act interests in lands or entitlements thereto owned by Koniag in the vicinity of the exterior boundaries of the Refuge. In each such case section 4 shall govern the determination of value and the negotiating period for the determination of value shall be the one year period after Koniag and the Secretary have agreed upon the interests to be conveyed.

SEC. 7. Lands or interests acquired by the United States under this Act shall become part of the Kodiak National Wildlife Refuge.

By Mr. DODD:

S. 342. A bill to amend title II of the Social Security Act to require that the annual reports of the trustees of the Federal old-age and survivors insurance, disability insurance, and hospital insurance trust funds include an opinion by the Chief Actuary of the Social Security Administration with respect to the methodologies and assumptions used in preparing such annual reports; to the Committee on Finance.

INCLUSION OF ACTUARY OPINIONS IN ANNUAL REPORTS OF CERTAIN TRUST FUNDS

Mr. DODD. Mr. President, today I am introducing legislation which would require inclusion of an actuarial opinion by the Chief Actuary of the Social Security Administration in the annual reports of the board of trustees of the OASDI and HI trust funds. The National Commission on Social Security recommended a similar step in its March 1981 report. The 1981 and 1982 OASDI trustees reports contained statements of actuarial opinion, but these statements were not required under law.

Under this legislation, the Chief Actuary of the Social Security Administration would comment on the acceptability within the actuarial profession of the methodologies and assumptions employed in the evaluation of future economic and actuarial trends relevant to the status of the trust funds. In that opinion, the Chief Actuary would also be required to state the governmental sources of the underlying assumptions and whether the actuary agrees with those assumptions.

The purpose of this legislation is to codify what has been practice for the last 2 years and help insure that future social security financial planning is based on sound economic and actuarial analysis. As important as such analysis is, recent performance has fallen short. Many of us who were in Congress in 1977 recall that, at that time, we were told that the 1977 amendments would insure solvency well into the 21st century. However, recent estimates and projections present a sharply different, considerably less optimistic picture. In 1977, it was estimated that OASDHI reserves as a percentage of outgo would rise from 29 percent in 1980 to 50 percent in 1987. However, in 1982, the Congressional Budget Office projected a steady downward path for OASDHI reserves, from 29 percent in 1980 to 2 percent in 1987.

The art of economic and actuarial forecasting is by no means perfect, and I do not pretend that passage of this legislation would enable us to predict the future with any more certainty than we can now. However, we can reduce the possibility of overly inaccurate forecasts by strengthening the process under which such forecasts are generated. In so doing, we can create a

sounder basis for future social security planning and administration.

In the near future, Congress will have to grapple with serious financial and structural difficulties facing the social security system. These difficulties may very well pose the greatest financial and political challenge in many years. This legislation in no way addresses the substance of any potential changes. However, as we work to restore the financial health of the system and the confidence of millions of Americans in the system, we owe it to the Nation to make sure that the information used to fashion the necessary changes is as accurate as possible. For these reasons I urge my colleagues to support this measure.

By Mr. BOSCHWITZ (for himself, Mr. JEPSEN, Mr. DURENBERGER, Mr. BOREN, Mr. HUDDLESTON, Mr. GRASSLEY, Mr. SYMMS, Mr. THURMOND, Mr. DECONCINI, Mr. PRESSLER, Mr. EAST, Mr. BAUCUS, Mr. KASTEN, and Mr. D'AMATO):

THE HEAVY USE VEHICLE TAX ADJUSTMENT ACT OF 1983

Mr. BOSCHWITZ. Mr. President, during floor action on the Surface Transportation Act, I offered an amendment to reduce the proposed increase in the heavy vehicle use tax.

I felt then, as I feel now, that it is absurd to expect an industry as hard hit by the recession and deregulation as the trucking industry to absorb tax increases of over 700 percent.

As you know, prior to the recent changes, the maximum tax was $240 per year for an 80,000 pound truck. The administration proposed to increase this to $2,700 per year, the House to $2,000 per year. The Senate Finance Committee proposed a $1,600 level. My amendment reduced the $1,600 per year to $1,200 and spread the imposition of the tax over 3 years.

My amendment passed 96 to 1, but House conferees would not support it. Instead they pushed through a $1,600 to $1,900 phase in which begins July 1, 1984 and ends July 1, 1987.

It is because of this high level of tax (a 700-percent increase) that I am introducing the Heavy Vehicle Use Tax Adjustment Act of 1983 today.

We are all aware of the condition of the trucking industry, and frankly, it is in serious trouble: 202 major interstate carriers have gone out of business in the past 2 years; 49,000 jobs have been lost; 57 other carriers have either filed for chapter 11 or have substantially reduced their services. Many small carriers or owner-operators have simply disappeared.

The industry itself made only $210 million in profits on $44 billion in revenues (one-half of 1 percent rate of return).

I believe it is ridiculous to expect an industry in this shape to absorb the tax increases which passed during the lameduck. Increases which were 10 times the industry's net profit.

The Department of Transportation pushed for these increases because of the results of a cost allocation study it did. According to the study, heavy trucks are not paying their fair share—based on the amount of damage they do to the roads. Unfortunately, this study does not take into account several important factors such as weather conditions, salt on the roads, and the effect of snow removal vehicles. This leaves the study's validity open to question, and makes it a poor basis for increasing taxes.

I believe most of us here in the Senate understand the importance of a healthy, competitive trucking industry. Trucks are a vital part of the transportation system, basically responsible for all the first and last stage delivery of bulk commodities. We cannot afford to lose this industry.

This is why I am introducing my bill today. I feel we must go back and reduce the heavy vehicle use taxes, or run the risk of putting many more trucking companies out of business.

I urge my colleagues to support this legislation. I also urge them to work with me to insure that the bill receives rapid consideration. We should not allow this issue to fall by the wayside.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 343

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Heavy Vehicle Use Tax Adjustment Act of 1983".

SEC. 2. REDUCTION IN HEAVY TRUCK USE TAX.

(a) IN GENERAL.—Subsection (a) of section 4481 of the Internal Revenue Code of 1954 (relating to imposition of tax) is amended to read as follows:

"(a) IMPOSITION OF TAX.—A tax is hereby imposed on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 33,000 pounds in an amount determined under the following tables:

"(1) For the taxable period beginning on July 1, 1984—

"If the taxable gross weight is:	The amount of tax per taxable period is:
Less than 55,000 pounds.....	$27, plus $1 for each 1,000 pounds or fraction thereof in excess of 33,000 pounds
At least 55,000 pounds but less than 70,000 pounds.	$50, plus $10 for each 1,000 pounds or fraction thereof in excess of 55,000 pounds
At least 70,000 pounds but less than 80,000 pounds.	$200, plus $20 for each 1,000 pounds or fraction thereof in excess of 70,000 pounds
80,000 pounds or more.....	$400.

"(2) For the taxable period beginning on July 1, 1985—

"If the taxable gross weight is:	The amount of tax per taxable period is:
Less than 55,000 pounds.....	$54, plus $2 for each 1,000 pounds or fraction thereof in excess of 33,000 pounds
At least 55,000 pounds but less than 70,000 pounds.	$100, plus $20 for each 1,000 pounds or fraction thereof in excess of 55,000 pounds
At least 70,000 pounds but less than 80,000 pounds.	$400, plus $40 for each 1,000 pounds or fraction thereof in excess of 70,000 pounds
80,000 pounds or more.....	$800.

"(3) For taxable periods beginning on or after July 1, 1986—

"If the taxable gross weight is:	The amount of tax per taxable period is:
Less than 55,000 pounds.....	$80, plus $10 for each 1,000 pounds or fraction thereof in excess of 33,000 pounds
At least 55,000 pounds but less than 70,000 pounds.	$300, plus $20 for each 1,000 pounds or fraction thereof in excess of 55,000 pounds
At least 70,000 pounds but less than 80,000 pounds.	$600, plus $60 for each 1,000 pounds or fraction thereof in excess of 70,000 pounds
80,000 pounds or more.....	$1,200.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall take effect on July 1, 1984.

(2) SPECIAL RULE IN THE CASE OF CERTAIN OWNER-OPERATORS.—

(A) IN GENERAL.—In the case of an owner-operator, paragraph (1) of this subsection and section 4481(a) of the Internal Revenue Code of 1954 shall be applied by substituting for each date contained therein a date which is 1 year after the date so contained.

(B) OWNER-OPERATOR.—For purposes of this paragraph, the term "owner-operator" means any person who owns and operates at any time during the taxable period no more than 5 highway motor vehicles with respect to which a tax is imposed by section 4481 of such Code for such taxable period.

(C) AGGREGATION OF VEHICLE OWNERSHIPS.—For purposes of subparagraph (B), all highway motor vehicles with respect to which a tax is imposed by section 4481 of such Code which are owned by—

(i) any trade or business (whether or not incorporated) which is under common control with the taxpayer (within the meaning of section 52(b) of such Code), or

(ii) any member of any controlled groups of corporations of which the taxpayer is a member,

for any taxable period shall be treated as being owned by the taxpayer during such period. The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sentence, taxpayers who own highway motor vehicles through partnerships, joint ventures, and corporations.

(D) CONTROLLED GROUPS OF CORPORATIONS.—For purposes of this paragraph, the term "controlled group of corporations" has the meaning given to such term by section 1563(a) of such Code, except that—

(i) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1) of such Code, and

(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563 of such Code.

(E) HIGHWAY MOTOR VEHICLES.—For purposes of this paragraph, the term "highway motor vehicle" has the meaning given to such term by section 4482(a) of such Code.

(F) TAXABLE PERIOD 1984.—In the case of the taxable period beginning on July 1, 1984, section 4481(a) of such Code shall be applied with respect to owner-operators without regard to the last sentence thereof.

SEC. 3. REFUNDABILITY OF UNUSED TAX IN CERTAIN CIRCUMSTANCES.

(a) IN GENERAL.—Subsection (c) of section 4481 of the Internal Revenue Code of 1954 (relating to the proration of tax) is amended by adding at the end thereof the following new paragraph:

"(3) OTHER HIGHWAY MOTOR VEHICLE DISPOSITIONS.—

"(A) IN GENERAL.—If a highway motor vehicle on which the tax imposed by this section for the taxable period has been paid is sold, traded, or otherwise disposed of before the close of such taxable period, the Secretary shall refund to the taxpayer that portion of such tax which is attributable to the portion of such taxable period during which the taxpayer does not use, or retain possession of, such vehicle.

"(B) CREDIT ON RETURNS.—Any person entitled to a refund under subparagraph (A) may, in lieu of filing a claim for refund, apply such amount as a credit against taxes imposed by this section due upon any subsequent return.

"(C) REGULATIONS.—Under regulations prescribed by the Secretary, the taxpayer may be required to present such certifications of disposition of the highway motor vehicle as is practical.".

(b) CONFORMING AMENDMENT.—Section 4481 of such Code is amended by striking out subsection (d).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1984.

● Mr. GRASSLEY. Mr. President. I rise in support of the Boschwitz bill which is the Senate passed version of the Surface Transportation Act of 1982.

The result of conference committee action was a bill which more closely resembled the House version. The conferees settled upon a maxium heavy vehicle use tax of $1,900 per year phased in over a 4-year period. The Senate version and Senator BOSCHWITZ's bill contain a 3-year phasein beginning July 1, 1984, with a maximum rate of $1,200. Unlike the conferees version which leaps to $1,600 on July 1, 1984, the Senate version imposes a $400 fee in 1984, increasing to $800 on July 1, 1985. Senator BOSCHWITZ has wisely reintroduced this measure and his effort to gain its enactment will have my support.

The Boschwitz bill also contains a provision which I offered on the Senate floor delaying the effective date of the tax increases 1 year for independent owner-operators. Independent owner-operators need this type of relief because they lack the ability to pass through the increased tax. Independent owner-operators own their own power units, pay their own costs, including taxes, and lease their services to a trucking company at a fixed rate. Consequently, independent owner-operators have a difficult time passing their costs through to shippers and trucking companies until the expiration of a contract. Already operating on razor thin profit margins, these independent owner-operators are unable to absorb any additional tax burden at this time.

The Senate provision also retained the tax on passenger tires and trucks weighing more than 10,000 pounds. These revenue sources enabled the Senate to reduce the fees on the heaviest trucks.

Irrespective of the merits of retaining the increased user fees on heavy trucks, there is plentiful evidence that the trucking industry does not have sufficient income to pay the increased tax. Many of my constituent-truckers are operating at only 40 percent of capacity. They are still reeling from the effects of deregulation. They are scrounging for business in a highly competitive environment where the recession has reduced the amount of available cargo to haul. To many, the additional cost threatens their survival. For that reason, it is important that all of us reaffirm our commitment to the Senate-passed bill and support Senator BOSCHWITZ in his effort to achieve a more workable piece of legislation.●

By Mr. HEFLIN:

S. 345. A bill to establish a national historic park at AfricaTown, U.S.A. (Prichard and Mobile), Ala.; to the Committee on Energy and Natural Resources.

THE DESIGNATION OF AFRICATOWN, U.S.A., AS A NATIONAL HISTORIC PARK AND DISTRICT

Mr. HEFLIN. Mr. President, today I am introducing legislation for myself and for Senator DENTON, which would designate AfricaTown, U.S.A. (Prichard and Mobile), Ala., as a national historic park and district. It is my understanding that Congressman JACK EDWARDS, of the First Congressional District of Alabama (Mobile), will be introducing a companion bill in the U.S. House of Representatives.

Mr. President, I ask unanimous consent that the statement by the distinguished junior Senator from Alabama (Mr. DENTON) who is a native of Mobile, Ala., appear in the RECORD immediately following mine. I am told that he will enter his statement by the close of business today.

Now, Mr. President, let me point out a few salient facts about AfricaTown, U.S.A., Ala. This name AfricaTown, U.S.A., Ala., is the historical designation given to the geographical region of the landing of the last known recorded cargo of Africans imported into the United States with the intent to continue slave trading in America. The *Clotilda* reportedly landed in Mobile, Ala., in 1859, with approximately 120 Africans aboard, who settled in a northeastern section of Mobile, which later became known as AfricaTown. To date, there is no record of any convictions of the alleged pirates who brought this contraband to Mobile, Ala.

Mr. President, AfricaTown, U.S.A., Ala., is an area of exceptional significance in local, national, and international history and culture. Many years after the landing of this schooner, it is reported that AfricaTown, U.S.A., Ala., was the largest and probably the only community of pure-blooded Africans in the United States. AfricaTown, U.S.A., today exists as a living part of the Mobile and Prichard, Ala., communities.

The Congress of the United States has declared that "the spirit and direction of the Nation are founded upon and reflected in our historic heritage, and the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American People." 16 U.S.C. 470–474.

The AfricaTown landscape as a cultural and historic resource is a living reflection of the Nation's heritage. It, therefore, must be protected and en-

hanced for ourselves and for our posterity. Research which documents the significance of AfricaTown, U.S.A., Ala., to peoples throughout the world has been completed, and is available for public information.

Mr. President, although the primary purpose of the legislation which I am about to introduce for myself and Senator DENTON—and which Congressman JACK EDWARDS will introduce in the House—is to create the AfricaTown, U.S.A., Ala., National Historic Park and District, there is another purpose of equal significance. This proposed national park and district is in the heart of one of the most economically distressed areas in the United States. The present state of our national and local economies, with Alabama today ranking second in America with its exorbitant unemployment rate, must not limit our ability to continue to seek new job opportunities and carry out our basic responsibilities.

The National Park Service system stands as a great example of how we have combined the purposes of education, cultural and natural resources preservation, recreation, and leisure time into a basic international, environmental human rights model. Protecting the critical qualities of the physical environment, while meeting human needs, is a significant example of the capacity of this Nation to resolve problems while promoting opportunity. This proposed legislation is a prime example of such an opportunity. It will stress the allocation and distribution of Government values to protect the economic value of Prichard and Mobile, Ala., while providing business and employment opportunity for Alabama residents. This, in my opinion, is the real value of this bill. It is an example of the creative and innovative use of Government power to promote economic equality.

Last, Mr. President, I must point out the unique approach which has been proposed to finance creation of the AfricaTown, U.S.A., Ala., National Historic Park and District. It reverses the traditional trend of calling upon the Federal Government to be the principal financier of public facilities. The mayor of Prichard, Ala., the Progressive League, Inc., AfricaTown, U.S.A., Ala., and the citizens of AfricaTown, propose to establish a private/public sector investment partnership to fulfill an international, national, and local historic, cultural, and educational need.

It is my understanding that the private sector, in this instance, will assume the traditional role of the Federal Government. In other words, Mr. President, the Federal Government will only be called upon to finance the cost of the designation per se of the AfricaTown, U.S.A., Ala., National Historic Park and District, which is estimated to be around $300,000. The Progressive League, Inc., in turn, will provide and designate the sources for the acquisition of lands, construction of facilities, and maintenance and supervision of the AfricaTown, U.S.A., Ala., National Historic Park and District. This is estimated to cost around $8 million.

Mr. President, during the more than 4 years since I have been a Member of the U.S. Senate, I have never known of a cultural, educational, and historic project such as this to be financed by a ratio of 96 percent to 4 percent—96 percent or $8 million by the private sector, and 4 percent or $300,000 by the Federal Government.

Mr. President, in recognition of the importance of this historic and cultural site to the State of Alabama to this Nation, and to the world in general, Senator DENTON, Congressman EDWARDS, and I feel that it is altogether fitting and proper that AfricaTown, U.S.A., Ala., be designated as a national historic park and district. We, therefore, urge prompt hearings on this bill by the appropriate committees and speedy passage thereof in both Chambers of Congress.

Mr. President, I ask unanimous consent that immediately following the statement of Senator DENTON regarding AfricaTown, U.S.A., Ala., that the entire text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 345

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds AfricaTown, U.S.A. (Prichard, and Mobile), Alabama, is of international importance for the people of the world—

(1) in illustrating the last recorded landing of Africans in the Western Hemisphere for the purpose of slavery; and

(2) in projecting the international commitment to Human Rights by ending slave trade.

SEC. 2. To preserve and interpret to the public the historic properties at and near AfricaTown, U.S.A. (Prichard, and Mobile), Alabama, the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized to establish the AfricaTown National Historical Park and District. The Park and District shall be comprised of those sites, building structures, objects, and natural features on or adjacent to areas that the Secretary in his discretion deems to be of cultural and historical significance. The Secretary shall establish the Park and District by publication of a notice to that effect in the Federal Register when he deems it advisable.

SEC. 3. The Secretary is authorized to acquire lands and personal property within the boundaries of the Park by donation, purchase with donated or appropriated funds, or exchange.

SEC. 4. The Secretary is authorized to enter into cooperative agreements with the owners of real and personal property within the boundaries of the Park to assist in the interpretation and preservation of those properties. These agreements shall include—

(1) a provision that the Secretary, through the National Park Service, shall have the right of access at all reasonable times to all public portions of the lands with the boundaries of the Park for the purpose of interpreting the Park to visitors;

(2) a provision that no substantive changes or alterations shall be made to the buildings, grounds, water patterns, and wetlands, except by mutual consent; and

(3) a provision that the subject matter and method of interpretation shall be determined by mutual consent.

SEC. 5. The Secretary is authorized to render financial and technical assistance to the owners of real and personal property within the boundaries of the Park to aid in the interpretation and preservation of the Park's unique historical, cultural, and natural features.

SEC. 6. The Secretary is authorized to construct on a portion of the land which he has acquired pursuant to his authority in section 3 of this Act those administrative facilities which he deems advisable, a visitors' center, museum, theatre and library for the interpretation of the historial, cultural, and natural features of the Park.

SEC. 7. The Park shall be administered by the Secretary in accordance with the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1,2-4), as amended and supplemented and the Act of August 21, 1935, (49 Stat, 666; 16 U.S.C. 461-467), as amended.

SEC. 8. The Secretary is authorized to enter into agreements with the Progressive League of the United States for supervision and maintenance of the Park.

SEC. 9. There are authorized to be appropriated such sums as are necessary to carry out the purpose of this Act.

By Mr. DODD (for himself, Mr. RANDOLPH, and Mr. CHAFEE):

S. 346. A bill to amend the Solid Waste Disposal Act to assure protection of public health and environmental safety in the Enviromental Protection Agency's regulations for the delisting of hazardous wastes, and to require the Environmental Protection Agency to establish a timetable for adding additional hazardous wastes to those regulated under such act; to the Committee on Environment and Public Works.

HAZARDOUS WASTE IDENTIFICATION IMPROVEMENT ACT

● Mr. DODD. Mr. President, news reports in the past months have documented numerous instances where the cancer-causing chemical dioxin has appeared in dangerous quantities. Dioxin's presence now threatens the existence of an entire town in Missouri, and it has been discovered in up to 50 additional sites in that State. From New York to Oregon, reports have indicated the presence of dioxin in lakes, streams, dumps, and other sites. The public—and the Members of this Congress—have good cause to fear the threat to our health and environment posed by this chemical.

This threat should have been averted by the relevant hazardous waste management law, the Resource Con-

servation and Recovery Act. But despite the fact that dioxin has long been recognized as a dangerous hazardous substance, it along with countless other hazardous substances has yet to be regulated under RCRA.

It is in an effort to strengthen regulatory control over such hazardous substances that I am reintroducing a bill I authored in the last Congress, the Hazardous Waste Identification Improvement Act, along with the distinguished Senator from West Virginia (Mr. RANDOLPH) and the chairman of the Senate Subcommittee on Environmental Pollution (Mr. CHAFEE). It is our hope that this bill will correct serious deficiencies in RCRA's ability to readily identify hazardous substances and prevent their pollution of the environment.

The danger that hazardous wastes pose is one which Congress has hardly ignored. Alerted to the contamination of our environment by these substances in 1977, we passed RCRA with the hope of creating a system of controlling hazardous wastes from the "cradle to the grave." But now, almost 6 years later, RCA's basic intentions are still not fulfilled by its regulations. Although the act's basic regulatory framework is in place, many of its key regulations remain unpromulgated. Others contain loopholes that allow dangerous wastes to go unregulated.

In fact, as a House Energy and Commerce Committee report on RCRA pointed out, as much hazardous waste escapes proper control today through loopholes as receives proper attention under RCRA. That amounts to the staggering total of almost 40 million-metric tons of wastes which go unregulated every year—the result of deficiencies in RCRA.

But when hazardous wastes are not adequately controlled under RCRA, we only create the potential for future hazardous waste sites which will require future cleanup under the Superfund program. In fact, 65 out of the original 116 priority Superfund sites were solid waste facilities which had received dangerous combinations of solid and hazardous waste due to a RCRA loophole. It would be a costly mistake to rely on one program to compensate for another's deficiencies. If we do not act now to strengthen RCRA, we will only pay—many times over—through Superfund cleanup in the future.

The Hazardous Waste Identification Improvement Act is intended to address two major weaknesses in RCRA. The first is that wastes that still contain hazardous constituents in significant concentrations can become exempt from RCRA regulations through a "delisting" procedure. The second is that EPA regulations do not yet cover many hazardous wastes. EPA has either not "listed" them as hazardous, or they do not exhibit any of the established hazardous waste characteristics.

Mr. President, it is my hope that by closing these loopholes we can make RCRA live up to its legislated purpose: "To promote the protection of health and the environment by * * * regulating the treatment, storage, transportation and disposal of hazardous wastes * * *."

Under RCRA, it is EPA's responsibility to identify, characterize, test and ultimately "list" all wastes that pose a threat to public health and the environment. EPA identifies a waste as hazardous through a listing process; usually, this is a general screening to determine if a kind of waste typically can cause harm to human health and the environment if mismanaged. If EPA lists a waste as hazardous, it should fall under RCRA regulations.

The first section of my bill addresses those special instances where a waste can be delisted, or exempted from RCRA regulations. Under existing law this is an important corrective measure in situations where EPA mistakenly lists wastes that are in fact not hazardous. But, in many instances, wastes that are still hazardous and pose a threat to human health and safety are slipping through this delisting process and escaping regulation. The Hazardous Waste Identification Improvement Act would close this loophole by adding three requirements to the delisting process: Consideration of other criteria; guidelines for the submission of delisting data; and a deadline for temporary delisting petitions.

Currently, the delisting process allows petitions, such as a company or waste treatment facility, the opportunity to demonstrate that its wastes are significantly different from listed wastes, or identified hazardous wastes of the same type. Wastes can vary because of treatment, or because they are generated in a different manner. If a waste can be proved to no longer meet the criteria for which it was listed, then it can be excluded—delisted—from hazardous waste regulations.

What delisting regulations do not address is the fact that wastes are frequently composed of numerous hazardous constituents. In some instances, these additional constituents may not have been taken into consideration when the waste was originally listed. Or in some treatment processes, these wastes may not have been sufficiently rendered nonhazardous or they may contain dangerous elements which have still not been listed by EPA as hazardous. In either case, EPA's regulations do not allow the Agency to reject a delisting petition if the petitioner's waste contains hazardous constituents in addition to those for which it was originally listed.

The delisting loophole is not merely a potential danger. It already has resulted in wastes being exempted from hazardous waste lists—and from RCRA regulations—that are still hazardous. The consequences are frightening.

In my own home State of Connecticut, for example, a temporary delisting was granted to a facility following treatment of its sludge pile. It since has been discovered that the sludge contained PCB's and other organics. Neither was the reason why the sludge pile was originally delisted. If given a final delisting, these hazardous wastes could have ended up in a sanitary landfill, posing a health threat to nearby residents.

In certain stainless steel operations, the resulting waste is listed as hazardous for containing the heavy metals chromium and lead. Typically nickel—a heavy metal—is also present, and would go untreated if the waste is delisted.

Some petroleum industry treatment processes produce an oil-sludge mix which is listed as hazardous for containing heavy metals. Yet the process can also contain dangerous organic compounds. Organics, many of which can cause severe health affects, are not covered by RCRA regulations, and, if delisted, could be released untreated into the environment at large.

Under the legislation I am introducing, we would no longer take the risk that delisting a waste would mean releasing its additional hazardous components from regulation. Instead, EPA will have the authority to consider additional constituents or other relevant factors when evaluating a delisting petition.

If the agency has reason to believe that additional hazardous constituents are present in the waste in significant concentrations, they can ask the petitioner to demonstrate the contrary. After sufficient comment period for the petitioner, EPA has the right to grant or deny a delisting petition based not only on the original constituent for which the waste was listed, but also on any additional hazardous constituents.

This legislation also mandates that EPA require specific data to be submitted and certified by the petitioner in a delisting petition. The delisting process depends on good faith; EPA evidently does not have the resources to verify every application. Falsification of delisting data has, unfortunately, proved to be a recurring problem for the agency. My bill would require EPA to develop guidelines for the submission of delisting data and for the certification or that data by the petitioner. I believe this will help the agency to oversee delisting petitions more effectively.

My bill also addresses those instances when wastes are temporarily delisted, or temporarily exempted from regulation. Historically, EPA has

been slow to make final decisions concerning a temporary delisting. In several instances, this had led to dangerous wastes being temporarily delisted over a long period of time despite evidence for their regulation.

My bill would require the Agency to make decisions on all temporary delistings within a year. I believe this will minimize any risk from wastes that could be hazardous, but have been granted a temporary delisting status.

I believe these revisions to the delisting procedure will better protect health and the environment. They may also simplify matters for the industry concerned. Under current law, if a delisted waste proves to be hazardous, the responsible industry could still be liable under common law for any damage to health and the environment. In fact, for just that reason, many industries will not use the delisting procedure. In some States, industries actually prefer to use the State delisting procedure precisely because it is frequently stricter than EPA's.

As I mentioned earlier, it is EPA's responsibility to develop tests, or characteristics, for identifying a waste as hazardous. EPA so far has developed four major tests for characterizing a waste as hazardous, and has produced a catalog of several waste types.

This is a good beginning. But the Agency has not gone far enough. The characteristics developed to identify wastes as hazardous entirely ignore many of our more dangerous industrial products. The result is that many wastes containing, for example, significant levels of dioxins, chlorinated organics, or pesticides, are not even considered hazardous under RCRA regulations. Other demonstrably dangerous wastes remain unlisted or and consequently unaddressed by RCRA regulations.

This lack of adequate coverage has undoubtedly endangered both public health and the environment. The presence of dioxin in at least 15 and in as many as 50 additional sites in Missouri is only one of the more egregious examples of wastes not regulated under RCRA. There are undoubtedly countless others.

I respect EPA's need to move with scientific caution in determining which wastes are hazardous. But caution should not mean paralysis. EPA has not listed any new wastes since July of 1980, and has missed its own deadlines for listing several hazardous wastes.

Mr. President, the bill I am introducing would require EPA to submit a plan to Congress for its work on the identification and listing of wastes. This plan, due 6 months after the Hazardous Identification Improvement Act is passed, would require EPA to make the following determinations within 2 years:

First, any plans to develop new regulations for identifying additional characteristics, or tests, for identifying hazardous wastes, with special attention to be paid to new toxicity characteristics;

Second, an identification of those wastes which the agency plans to decide to list as a hazardous waste within a mandated 2- and 5-year period;

Third, a determination by EPA in conjunction with the interagency national toxicology program of the possibility of determining whether the presence of certain hazardous elements at levels above those commonly agreed to be dangerous could automatically classify a waste as hazardous;

My bill would also require EPA to promulgate regulations on dioxin and dibenzofuran containing wastes within 6 months after the enactment of the Hazardous Waste Identification Act.

It is my hope that requiring EPA to develop and submit a plan to Congress for its work on the identification and listing of wastes will aid the Agency in setting priorities and allocating resources. Similarly, it is my belief that mandating regulations on dioxin and other deadly wastes will push the Agency to complete its work in this area as quickly as possible—and before further incidents like Times Beach, Mo., occur.

With 57 million metric tons of hazardous waste produced by industry each year, it is essential that known or suspected hazardous wastes be brought under the scope of RCRA as quickly as possible. It is vital that we aid EPA in allocating its resources to determine which wastes are hazardous and to bring them under regulation.

It is important to remember that hazardous wastes are not an abstraction but an unavoidable part of our daily lives. Hazardous waste is the inevitable byproduct of many of our major industrial processes. Each day American industry produces enough waste to fill then New Orlean's Superdome—floor to ceiling—five times over. From Love Canal to the Valley of the Drums, history has shown us that the safe disposal of hazardous waste is a problem we cannot afford to ignore.

Yet no matter what approach we take to the safe handling of hazardous wastes, there are costs involved—for industry, for government, and for individual citizens. Our only choice is when to incur those costs, and how to invest best to insure protection of both health and the environment.

I believe the time for that investment is now, not later. It will be far more cost effective to work to insure that our existing regulations are sound than to postpone their solution—and charge the costs to some future account. If we do not act now to close the loopholes in RCRA, we are only creating future superfund sites.

The choice is ours. By investing now in a more credible delisting procedure and in a plan to identify and list hazardous wastes, I believe we are making a sound investment for the years ahead.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 346

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Hazardous Waste Identification Improvement Act".

SEC. 2. Section 3001(b) of the Solid Waste Disposal Act is amended by adding at the end thereof the following new paragraphs:

"(4)(A) The regulations promulgated under parapraph (1) shall provide that, when evaluating a petition to exclude a waste generated at a particular facility from being regulated as a hazardous waste, the Administrator shall consider criteria, constituents or other related factors other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional criteria, constituents or other related factors could cause such waste to be listed as a hazardous waste. The Administrator shall grant or deny such petition only after notice and opportunity for public hearing.

"(B) The temporary granting of such a petition prior to the enactment of the Hazardous Waste Identification Improvement Act without the opportunity for public comment and the full consideration of such comment shall not continue for more than 12 months after the date such petition is granted or 6 months after the date of enactment of the Hazardous Waste Identification Improvement Act, whichever is later. If a final decision to grant or deny such a petition has not been promulgated after notice and opportunity for public comment within the time limit prescribed by the preceding sentence, any such temporary granting of such petition shall cease to be in effect.

"(C) Any petition to exclude from regulation a waste generated at a particular facility shall be accompanied by adequate information to evaluate such petition, including information on samples of such waste determined to be representative on the basis of guidelines for the development and submission of such information published by the Administrator. Such information shall be certified by a responsible corporate official of such facility to be accurate, complete, and representative, within the knowledge of employees or contractors of such facility.

"(5) For the purpose of assuring the timely completion of regulations identifying the characteristics of hazardous waste and the listing of additional particular hazardous wastes, as required by paragraph (1) of this subsection, the Administrator shall—

"(A) not later than six months after the date of enactment of the Hazardous Waste Identification Improvement Act, submit to the Congress a work plan (i) for developing regulations identifying additional characteristics of hazardous waste, including measures or indicators for toxicity; (ii) identifying those particular wastes on which the

Agency intends to decide whether to list as a hazardous waste within two years after such date of enactment, and those particular wastes on which the Agency intends to decide within five years after such date of enactment; and (iii) developed by the National Toxicology Program in cooperation with the Administrator, evaluating the feasibility of determining whether the presence of certain constituents (such as known carcinogens, mutagens, or teratogens) at levels substantially in excess of levels commonly agreed to affect health may cause wastes to be hazardous per se;

"(B) not later than six months after the date of enactment of the Hazardous Waste Identification Improvement Act, promulgate regulations listing doxin and dibenzofuran-containing wastes as hazardous wastes in accordance with paragraph (1) of this subsection;

"(C) not later than two years after the date of enactment of the Hazardous Waste Identification Improvement Act, (i) promulgate regulations identifying additional characteristics of hazardous waste, and (ii) reach decisions on all wastes identified in accordance with subparagraph (A)(ii) for decision within two years and for each such waste either promulgate regulations listing such particular hazardous waste or publish a statement as to why such waste should not be listed as a hazardous waste; and (iii) report to the Congress on progress on subparagraph (A)(iii); and

"(D) not later than six months after the date of enactment of the Hazardous Waste Identification Improvement Act, determine the appropriateness of using the extraction procedure toxicity characteristic for evaluating petitions to exclude a waste generated at a particular facility from being regulated as a hazardous waste, and, not later than two years after such date of enactment, made such improvements as are necessary in the procedure to predict more accurately the leaching potential of wastes."●

● Mr. CHAFEE. Mr. President, today I join Senator DODD and Senator RANDOLPH in introducing the Hazardous Waste Identification Improvement Act, which will amend the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. The purpose of the bill is to close loopholes in the current regulatory program which have become apparent in the evolution of the national hazardous waste management program.

One product of our industrial society which has emerged as a national health and environmental concern is hazardous waste. Vast quantities of hazardous waste have been generated in the past four decades. Mismanagement of hazardous waste has damaged our land, water and air and posed grave risks to public health. Damage to the environment may take many forms including: Groundwater and water supply contamination, wildlife habitat destruction, soil contamination, fish kills, loss of livestock, air pollution, fire, explosion and crop damage. Hazards to human health can be devastating; whether through inhalation, skin contact or ingestion, the impacts on the function of the human body can be serious.

The Congress in 1976 enacted the Resource Conservation and Recovery Act in an effort to provide for development of a national regulatory program for the management of hazardous wastes—from its generation to its ultimate disposal—the so-called cradle-to-grave management system. Since 1976, EPA has been establishing national requirements for the management of hazardous wastes in a manner protective of human health and the environment. Development of the full range of regulations needed for an effective program has not proceeded as quickly as the Congress intended. Delays in promulgation of regulations have resulted in delays in implementation of the act in general. However, the Agency did promulgate the final major regulatory package last year.

Implementation of the RCRA program is a shared responsibility of EPA and State governments through EPA-authorized State hazardous waste management programs. In view of the scope and complexity of the comprehensive regulatory program now in place, both EPA and the States have a monumental task to fully implement the regulations.

As with any new program, implementation of the hazardous waste program has brought to light a number of deficiencies or loopholes. Two of these loopholes are the focus of the bill that I am joining Senator DODD in introducing today—the Hazardous Waste Identification Improvement Act. Later this week I intend to introduce legislation to address a number of other gaps in coverage under the current RCRA program.

The provisions of the Hazardous Waste Identification Improvement Act contain provisions relating to listing and delisting of hazardous wastes. The RCRA regulations provide two mechanisms for determining whether a waste is hazardous: a set of characteristics of hazardous waste and a list of specific hazardous wastes. A waste must be managed in accord with RCRA regulations if it either exhibits any of the characteristics or if it is listed. EPA has developed criteria for identifying the characteristics of hazardous waste and for determining which wastes to list. Since the initial identification of characteristics and listing of specific hazardous wastes, EPA has not expanded the set of characteristics nor added significantly to the list of hazardous wastes. Even dioxin—one of the most toxic substances known to man—has not been added to the list. One section of the Hazardous Waste Identification Improvement Act requires EPA within 2 years to identify additional characteristics of hazardous waste and add specific wastes to the list of hazardous wastes. The Agency must submit to the Congress within 6 months a plan outlining their program to meet this requirement.

The bill also requires that EPA within 6 months promulgate regulations listing dioxin—and dibenzofuran—containing wastes as hazardous.

The statutory definition of hazardous waste requires EPA to make a judgment as to the hazard posed by a waste "when improperly treated, stored, transported or disposed of, or otherwise managed." In waste containing toxic constituents, this hazard is dependent on two factors: the intrinsic hazard of the constituents of the waste, and the release of the constituents to the environment under conditions of improper management. One provision of this bill would require EPA with the national toxicology program to evaluate the feasibility of determining whether the presence of certain constituents (such as known carcinogens) at levels substantially in excess of levels commonly agreed to affect health may cause wastes to be hazardous per se.

A waste is identified as hazardous either because it exhibits one of the characteristics or because it appears on the list of hazardous wastes. Both particular wastes and sources or classes of waste streams may appear on the list. EPA has chosen to emphasize waste streams in addition to specific hazardous substances because industrial wastes tend to be complex mixtures, containing many different constituents, only some of which may exhibit hazardous characteristics. Individual waste streams may vary depending on raw materials, industrial processes and other factors. Thus, while a waste stream listed by EPA may be hazardous, a specific waste from an individual facility may not be. For this reason, the RCRA regulations contain a mechanism for demonstrating that a specific waste from a particular facility should not be included in the regulatory control program.

The delisting process, as it is called, allows petitioners, and/or individual hazardous waste generators, the opportunity of showing that their waste is significantly different from listed wastes of the same type. If the proper showing is made, EPA can exclude from regulation as a hazardous waste the specific waste from a particular facility. What the regulations do not adequately address is that all of the constituents in a waste stream may not have been taken into consideration when the waste was originally listed. Or in some treatment process, additional wastes may not have been rendered sufficiently nonhazardous, or these wastes contain dangerous elements which still have not been listed by EPA as hazardous. Current EPA regulations do not allow the Agency to reject a delisting petition if the petitioner's waste contains hazardous con-

stituents in addition to those for which it was originally listed. This is a growing problem—as more and more delisting petitions are being submitted to EPA for action.

To address this problem, the bill gives EPA the authority to consider additional constitutents or other relevant factors when evaluating a delisting petition. If the Agency has reason to believe that there are additional hazardous constituents present in the waste in potentially significant concentrations, they can ask the petitioner to demonstrate that is not the case. After sufficient comment period for the petititoner, EPA has the right to grant or deny a delisting petition based not only on the original constituent for which the waste was listed, but also on any additional hazardous constituents.

I will work with the Committee on Environment and Public Works to consider this bill along with other amendments to the Resource Conservation and Recovery Act.●

By Mr. HATFIELD:

S. 365. A bill entitled "The Department of Defense Civilian Air Traffic Controllers Act of 1983; to the Committee on Governmental Affairs.

DOD CIVILIAN CONTROLLERS BILL

● Mr. HATFIELD. Mr. President, during consideration of the first continuing resolution for this fiscal year we chose to give FAA air traffic controllers a special pay differential for their continued service, and loyalty during the air traffic controllers strike. I supported this effort because I believe it was necessary and important to recognize their contribution. However, in our haste we overlooked another important group that contributes greatly to the national air space system—the civilian air traffic controllers of the Department of Defense. These people have the same responsibilities as their FAA counterparts, use the same equipment, and Congress included them in the same training requirements, retirement, and medical provisions as DOT controllers with special legislation in the 96th Congress.

I quote from the House report on this legislation:

In May of 1977 the Department of the Army began a new study to determine whether DOD controllers had problems comparable to those of DOT controllers. The Army Task Force examined whether the process of aging had the same impact on air traffic controllers in both services. By visiting National Airport (a DOT facility), Fort Rucker, Alabama (a DOD facility), and Fort Hood, Texas (another DOD facility), the Task Force was able to conclude that, "Occupationally there are no basic differences between duties being performed by FAA air traffic controllers and the civilian air traffic controllers at Fort Rucker and Fort Hood."

The Army Task Force found that the burn-out problem was equally severe in DOD as in DOT. It found "certain behavioral symptoms characteristic of anxiety reaction and stress." The Task Force also found that the dehumanized work environment and the rotating shifts had harmful effects on employees.

As a result of this study, Deputy Assistant Secretary Carl W. Clewlow announced to the Subcommittee on Civil Service on July 13, 1979, that, "In the interest of equity, we believe that Department of Defense civilian controllers who are actively engaged in the separation and control of air traffic, and who are performing like duties to those air traffic controllers in the Department of Transportation, should be treated the same as their counterparts in the Department of Transportation."

No evidence was presented during the subcommittee's hearings that the job of a DOD controller was substantially different from that of a DOT controller.

In fact, occupational categories, entry requirements, training, and health standards are identical for the two groups.

I believe it was an oversight by Congress to exclude these important individuals, and it would be my hope that the Senate would see fit to consider this bill as an effort to rectify our oversight.

The cost should not exceed $500,000 per year out of existing DOD funds, and the importance to safety of the flying public is incalculable.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 365

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Section 4109(c) of title 5, United States Code, is amended by inserting "or the Secretary of Defense" after "Administrator, Federal Aviation Administration," and by inserting "or the Department of Defense" after "of such Administration".

(b) Section 5532(f) of title 5, United States Code, is amended—

(1) in paragraph (1) by inserting "or the Secretary of Defense" after "Administrator, Federal Aviation Administration"; and

(2) in paragraph (2) by inserting "or the Secretary of Defense" and "Administrator, Federal Aviation Administration" and by inserting "or such Secretary" immediately before the period.

(c) The analysis of chapter 55 of title 5, United States Code, is amended by inserting immediately before the period in the item relating to section 5546a "and the Department of Defense".

(d) The section heading of section 5546a of title 5, United States Code, is amended by inserting at the end thereof "and the Department of Defense".

(e) Subsection (a) of section 5546a of title 5, United States Code, is amended—

(1) in the first sentence of such subsection by inserting "or the Secretary of Defense (hereafter in this section referred to as the 'Secretary')" after "referred to as the 'Administrator')";

(2) in paragraph (1) of such subsection by inserting "or the Department of Defense" after "Federal Aviation Administration" and by inserting "or the Secretary" after "by the Administrator"; and

(3) in paragraph (2) of such subsection by inserting "or the Department of Defense" after "Federal Aviation Administration" and by inserting "or the Secretary" after "determined by the Administrator".

(f) Section 5546a of title 5, United States Code, is amended—

(1) in subsection (c)—

(A) in the first sentence of paragraph (1) by inserting "or the Secretary" after "Administrator" and by inserting "or the Department of Defense" after "Federal Aviation Administration"; and

(B) in paragraph (1)(B) of such subsection by inserting "or the Secretary" after "Administrator";

(2) in subsection (d)—

(A) in paragraph (1) by inserting "or the Department of Defense" after "Federal Aviation Administration" and by inserting "or the Secretary" after "Administrator" both times it appears; and

(B) in paragraph (2) by inserting "or the Department of Defense" after "Federal Aviation Administration";

(3) in subsection (e) of such section by inserting "or the Secretary" after "Administrator" and by inserting "or the Department of Defense" after "Federal Aviation Administration"; and

(4) in subsection (f)—

(A) in paragraph (1) by inserting "or the Secretary" after "Administrator" and by inserting "or the Department of Defense" after "Federal Aviation Administrator"; and

(B) in paragraph (2) by inserting "or the Secretary" after "Administrator".

(g) Section 5547 of title 5, United States Code, is amended by inserting "or the Department of Defense" after "Federal Aviation Administration".

(h) Section 8344(h)(1) of title 5, United States Code, is amended by inserting "or the Secretary of Defense" after "Administrator, Federal Aviation Administration.".

(i)(1) The amendments made by subsections (b), (c), (d), (e), (g), and (h) shall take effect at 5 o'clock ante meridian eastern daylight time, August 3, 1981.

(2) The amendments made by subsections (a) and (f) shall take effect on the first day of the first applicable pay period beginning after the date of the enactment of this Act.●

By Mr. MATHIAS:

S. 368. A bill to amend section 234 of the National Housing Act to permit shared equity condominium mortgages; to the Committee on Banking Housing and Urban Affairs.

SHARED EQUITY AND CONDOMINIUM UNIT OWNERSHIP

● Mr. MATHIAS. Mr. President, section 234(c) of the National Housing Act authorizes the Secretary of Housing and Urban Development to insure mortgages on one-family units in condominiums, "provided the mortgagor is acquiring, or has acquired, a family unit covered by a mortgage insured under this subsection for his own use and occupancy and will not own more than four one-family units covered by mortgages insured under this subsection."

HUD regulations (24 CFR 234.59) state that—

The family unit covered by an insured mortgage shall be owned and occupied by

the mortgagor or the mortgagor shall own and occupy another family unit covered by an insured mortgage. The mortgagor may not own more than four family units covered by insured mortgages, one of which shall be for his/her own use and occupancy.

The requirements of the statute and the regulations have been interpreted, for application to the shared equity concept, as limiting the nonoccupant comortgagor to four HUD-insured mortgages on units in the same project or different projects. An interest in a unit, even though limited by the shared equity agreement, has been interpreted to constitute ownership. Consequently, an investor can only be involved in four shared equity arrangement.

The shared equity concept is one method of assisting homeownership for persons who might otherwise not be able to afford it. Relaxation of the four-unit limit would open up this approach for condominium purchasers.

The bill I am introducing today would accomplish this purpose. It would permit syndication investors to use insured financing under section 234(c) while continuing the strict prohibition against investors owning more than four units. By requiring HUD to approve the equity sharing arrangement, the Department will be in a position to set standards, such as the percentage of equity and how they can be shared. This will assure that such new authority will assist buyers while prohibiting transactions designed to circumvent the prohibition on investor financing under section 234(c).

I ask unanimous consent that the text of my bill appear at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 368

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 234(c) of the National Housing Act is amended by inserting before the period at the end thereof the following: ", except that this clause shall not apply to a comortgagor participating in an equity sharing arrangement approved by the Secretary where the other comortgagor participating in the arrangement is acquiring the unit for his own use and occupancy".●

By Mr. MATHIAS:

S. 369. A bill for the relief of certain Government physicians who were paid basic pay, performance awards, and physicians comparability allowances in aggregate amounts exceeding the limitation set forth in section 5383(b) of title 5, United States Code; to the Committee on Governmental Affairs.

LIMITATION OF PAY CAP FOR CERTAIN INDIVIDUALS

● Mr. MATHIAS. Mr. President, from time to time, the best intentions of Congress become counterproductive. The Federal physicians comparability allowance (PCA) and the senior executive service (SES) bonus system both were enacted to enhance the recruitment and retention of highly qualified individuals for Government service. However, because the current law prohibits a Federal employee from receiving more than the executive schedule level I pay, certain Federal employees are being asked to pay back part of the SES bonuses which they have received. The consequence will be to penalize the very individuals who have received awards for exemplary service.

Mr. President, today I am introducing legislation providing for a limited waiver of the fiscal year 1982 executive level pay cap of $69,630 for 13 Public Health Service, Senior Executive Service, medical officers. The waiver is effective for the fiscal year 1982 dollar limitation.

The current law—title 5 United States Code 5383(b)—prohibits a Federal employee from receiving more than the executive schedule level I pay. These 13 medical officers have been awarded total compensation that exceeds the statutory limit because, in addition to their base pay, each was awarded a Senior Executive Service performance bonus for meritorious service during fiscal year 1981 and each received a $10,000 per annum physicians comparability allowance. Congress raised the SES pay ceiling on January 1, 1982, thereby raising the base pay from $50,112.50 to $58,500, while retaining the executive level pay cap of $69,630.

The PCA was negotiated under the established civil service laws and the SES bonuses were paid before Congress raised the SES pay cap. The raising of the SES pay cap, without a commensurate raising of the executive schedule level I pay limit, left these 13 doctors in an unusual situation, which they have no power to remedy. They have been asked to return part of their SES bonuses to bring their fiscal year 1982 pay within the executive schedule level I limit. Overpayments range from $1,455 to $5,988.

The effect of the pay cap limitation is clear. Rather than creating incentives and boosting morale, as the bonus and award programs were intended by law to do, this action is lowering morale and lessening whatever useful effects might have been gained for the Public Health Service.

I know of no other Federal employees who have been asked to repay any part of their SES bonuses to the Government.

I believe this bill is worthy of the Senate's expeditious and favorable consideration. I urge my colleagues to join me in supporting it.●

By Mr. PERCY (for himself and Mr. DIXON):

S. 370. A bill entitled the "Imported Liquefied Natural Gas Policy Act of 1983"; to the Committee on Energy and Natural Resources.

IMPORTED LIQUEFIED NATURAL GAS POLICY ACT OF 1983

Mr. PERCY. Mr. President, I rise today on behalf of myself and my able colleague Senator ALAN DIXON to introduce the Imported Liquefied Natural Gas Policy Act of 1983. The bill addresses an issue which is of paramount concern to our Illinois constituents, and to citizens in many of our neighboring States—the continued importation of liquefied natural gas at above-market prices.

As we all know, we are faced with a sluggish economy, and sluggish demand for natural gas. Low-priced domestic gas supplies are not being sold. At the same time, consumers are paying immense prices for new, expensive supplies of natural gas, sometimes from exotic sources. Why? Because Government regulations have discouraged cost-cutting efficiencies, and enabled pipelines and others to simply pass extra costs on to consumers.

In normal economic times, this would be foolish enough. But in a time of recession and high unemployment, it is an outrage. The problem must be dealt with, and prices must come down.

I have been hopeful that through administrative procedures this problem could be rectified and I am still hopeful that this will occur. But I was disappointed by a recommendation issued Friday, January 28, 1983, by an administrative law judge to the Federal Energy Regulatory Commission and the Economic Regulatory Administration not to do anything about this situation. I strongly urge the Commissioners and the Administrator at ERA to carefully review the transcript from the hearings that were held. I believe they will be convinced by the evidence in the case that they cannot sit idly by and let these imports continue at their current prices. These agencies were established to take into consideration the public interest. I urge the Commissioners not to dismiss the effect of high cost gas on our poor, elderly, and businesses as the law judge has clearly done in his recommendation.

Presently—and I do not believe this is open to debate as the judge has implied—the FERC and the Secretary of Energy have authority to require a reasonable rate for LNG—a rate that should reflect prevailing market conditions, not just the proposed cost of bringing the LNG to market. The Percy-Dixon bill would simply set an upper limit on the lawful price of regasified LNG. Any price higher than the 90-day average price for No. 6 fuel oil—over the most recent period for which data are available—would, by statute, not be reasonable.

In fact, the FERC and the Secretary of Energy may find that the reasona-

ble price for LNG is even less than the price of No. 6 fuel oil. If so, we would support their decision to allow only a lower price to be charged for LNG. What we are looking for, and what our constituents should pay, is nothing more and nothing less than a fair-market-value price for this gas. We have simply identified No. 6 fuel oil as an upper limit for what is a fair market value.

Let us look at the dollars and cents of the LNG issue. LNG consumers will have to pay about $7 per MCF after regasification, and that does not even include the pipeline transmission and local distribution costs. Illinois ratepayers and other consumers could have to pay as much as $9 per MCF. The most common replacement fuel for gas, No. 6 fuel oil, sells for roughly $4.50 for the same energy content, according to recent Government figures.

Anything more than this is an unfair price of LNG. Even this price is higher than the $2 or $3 per MCF gas now available from many American wells. But it does offer a sensible middle ground, a benchmark around which serious negotiations can begin between buyers and sellers of LNG in the world market.

We encourage LNG buyers and sellers to use the time before this bill is passed to renegotiate prices to free-market levels. After enactment of the Percy-Dixon bill, LNG could be sold at above free-market levels only if alternative domestic supplies to the market served are not available at or below the proposed price, only if the source of supply is reasonably secure, and only if the import agreement includes a provision for reducing quantities of prices if market circumstances change. If any part of the United States does not have lower priced domestic gas available to replace LNG imports, it can continue to receive higher priced LNG under our bill.

The need for renegotiation extends not just to LNG. Continental sources of imported natural gas are also priced way above available domestic gas. It is time for these prices to move down, too. Today, a bilateral consultative process has begun between the United States and Canada on this question of import prices, as well as a number of other energy issues. I have encouraged through meetings and numerous conversations with Ambassador Gotlieb and our own State Department officials to set a timetable for serious negotiations over the Canadian gas border price. I am hopeful that such a timetable will be set promptly. If not, I will have no recourse but to submit legislation on this matter, as well. Our trading partners have to realize that I will not stand idly by if Illinois consumers have to pay more than fair market value for any gas imports.

In the late 1970's, as ever-rising prices for imported energy began pommeling our economy and draining our Nation's wealth, we reached a consensus that it was often worthwhile to pay a premium for domestic fuel if it could help cut back on our imports. But in natural gas, we are paying a premium for imported fuel while cutting back on our domestic production. This cannot continue.

I want to make clear to my colleagues that this bill is an effort to move toward, not away from a free energy marketplace. Senator DIXON and I are simply trying to correct the consequences of costly, uneconomic decisions resulting from an overregulated marketplace for natural gas. In a free market, no one would have ever imported this LNG in the first place—and if anyone had, no one downstream would have bought it.

I also want to make clear that I continue to support efforts to develop new energy supply technologies, including supplemental gas resources, as long as those projects make economic sense or public support for other reasons. We have a long way to go before we solve our long-term energy supply problems, and we cannot turn our backs on promising technologies with high capital costs. But we must go into these projects selectively, with our eyes open. If, for whatever reason, we consider it in the public interest to press on with a risky or uneconomic project, we should not expect a relatively small number of ratepayers to bail it out if it runs into trouble.

I further want to make clear that I am a strong supporter of free trade and the inviolability, except in extreme circumstances, of contracts made between trading partners. From the beginning, all persons involved in the LNG trade knew or should have known that U.S. administrative agencies—and the Congress—will only allow interstate LNG shipments to take place if prices are fair and make reasonable economic sense. This history of the LNG trade—including the history of negotiations surrounding the imports heading into Illinois—show unmistakably that price has always been open to discussion. Up to now, prices have always been pushed upward, never downward. All that the Percy-Dixon bill does is make sure that prices can be renegotiated downward as well as upward.

By Mr. SASSER (for himself, Mr. NUNN, Mr. LEVIN, Mr. JOHNSTON, and Mr. PRESSLER):

S. 371. A bill to amend the Internal Revenue Code of 1954 to provide for a credit against tax with respect to the employment of certain unemployed individuals; to the Committee on Finance.

TARGETED JOBS TAX CREDIT AMENDMENTS ACT OF 1983

● Mr. SASSER. Mr. President, in his last news conference in 1982, President Reagan conceded to reporters in the White House Press Room that high unemployment rates would be with us for some time. Pressed by the journalists for possible solutions to the problem, the President expressed his faith in the private sector by suggesting that if every business in the country would hire just one unemployed person, it would help to reduce unemployment dramatically.

Today, along with Senators NUNN, LEVIN, JOHNSTON, and PRESSLER, I am introducing legislation designed to encourage businesses to do just what the President wants them to do: hire the unemployed.

Roughly 12 million Americans were out of work for the month of December. Unemployment climbed to 10.8 percent marking the fourth straight month that the national unemployment level topped 10 percent. In addition to those who are classified as unemployed, another 1.8 million Americans have simply given up looking for work. These individuals are termed "discouraged workers," a title that sadly has become applicable to more and more Americans.

Many of us face unemployment situations in our home States that are even more severe than represented by these national figures. Such is the case in Tennessee. The latest figures for Tennessee showed the unemployment rate rising to 13.3 percent for December. This marks the 13th consecutive month that unemployment has been in double-digit figures in Tennessee and the 28th consecutive month that our State rate has been above the national unemployment rate.

The 13.3-percent figure means that 285,900 Tennesseans were out of work for the month of December. This figure is the highest such number since the Tennessee Department of Employment Security began keeping records, eclipsing the previous high of 258,700 unemployed in February 1982.

Only seven counties in Tennessee had unemployment rates below 10 percent in November. Of the remaining 88 counties, 32 reported unemployment of 15 to 20 percent and 24 counties had jobless rates between 20 and 30 percent, according to the Tennessee Department of Employment Security. Even more shocking is the news that two Tennessee counties had unemployment rates over 40 percent.

Compounding the curse of continuing unemployment in 1982 was an equally severe rise in the number of business failures in America. Dun and Bradstreet's preliminary figures for 1982 show a total of 25,346 business failures. This compares with 17,044 business failures recorded in the same time span during 1981. The administration's economic policy resulted in a 49-percent increase in business failures across the Nation during 1982. And as

we all know, Mr. President, the vast majority of these failures occur in the small business sector of the economy.

Like the President, I believe it would be helpful if businesses would hire the unemployed out of a sense of duty or altruism or patriotism. But let us face it; you cannot hire someone if you are worried about staying afloat yourself. The bill we are introducing today tries to address this worry, this concern of America's businesses.

Specifically, S. 371, the Targeted Jobs Tax Credit Act Amendments of 1983, proposes the creation of another target group in the targeted jobs tax credit section in the Internal Revenue Code. Under our present law, this credit is available to businesses hiring individuals from one of nine specified economically disadvantaged groups. S. 371 goes one step further by providing a broad incentive for labor-intensive industries to increase employment activity.

S. 371 creates a target group for employees who have been unemployed for 1 year or who have exhausted all available unemployment benefits. This legislation also increases the tax credit available from 50 percent of the employee's qualified first-year wages to 65 percent of such wages where the hiring company is located in a labor market area with an unemployment rate that has been in excess of the national average for the 3 months preceding passage of the bill and where the person hired has resided in that area prior to being hired.

The bill also increases the amount of credit available to 75 percent of qualified first-year wages where the hiring company is a small business as defined by section 3(a) of the Small Business Act. This small business provision is especially timely for a number of reasons.

A recent congressional research service study indicated that estimated tax benefits to small business in 1981 represented only 18 percent of the total tax cuts enacted that year. This figure is projected to shrink to 12.7 percent for 1982 and sink even further to 9.2 percent by 1986. Quite clearly, Mr. President, small businesses are being deprived of the tax incentives that can help small business prosper and grow.

The significance of tax incentives is not lost on small business operators. At the end of the 1981 White House Conference on Small Business, those in attendance put forward 60 recommendations on the state of small business. Eleven of these recommendations dealt with some aspect of taxation. In addition, when these recommendations were ranked in order of importance, the tax system was the subject of half of the first 10 rankings, including the No. 2 and No. 3 priority items.

The type of tax credit contained in S. 371 is particularly attractive to labor-intensive industries. The recent SEC-sponsored forum between small business and Government leaders indicates that 97 percent of our small businesses are labor intensive. For the most part, small businesses are service-related firms which can put marginal workers to productive use. A tax credit such as that contained in S. 371 is broad enough in its scope to provide an incentive for these businesses to generate such additional jobs.

Finally, the treatment accorded small business in S. 371 is warranted in light of the impact small business has on employment. Small businesses create a significant proportion of new jobs in America. One study done on the national level reports that from 1978 to 1980, employment in the private sector increased 8.7 percent. Roughly 78 percent of this increase occurred in establishments with fewer than 100 employees. Yet these same establishments accounted for only 49 percent of the private sector labor force.

I have long been aware of the large contribution to employment made by small business in Tennessee. Between 1979 and 1981, overall employment in Tennessee decreased by 0.2 percent. However, those firms which employed from 1-4 workers showed an increase of 16.8 in employment for that same period.

Small business in Tennessee means more than jobs alone. Tennessee small businesses produce roughly half of the State's goods and services. In addition, firms with less than 100 employees constitute the majority in all major sectors of the Tennessee economy. At this point, Mr. President, I ask unanimous consent that the Tennessee Department of Economic and Community Development report on the facts of Tennessee's small businesses be included in the RECORD as if read.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE FACTS: TENNESSEE'S SMALL BUSINESSES

I. There are approximately 83,000 business establishments in Tennessee. About 79,000 of them employ less than 100 employees (according to U.S. Census Bureau, "County Business Patterns 1980"). These 79,000 firms are the companies generally defined as Tennessee's small businesses.

II. The small businesses produced roughly half of Tennessee's $50 billion in goods and services last year.

III. Tennessee small businesses contributed about 45 percent of the State's total payroll last year.

IV. Tennessee firms with less than 100 employees constitute: 80 percent of the manufacturing companies in the State; 99 percent of the construction firms in the State; 61 percent of the wholesale and retail operations in the State; 98 percent of all service companies in the State; and 99 percent of the finance insurance and real estate business in the State.

V. Internal Revenue records now prove that the sole proprietorship form business in used almost exclusively by small business. These same Internal Revenue records further prove that during the last two U.S. recessions, the unemployment rate in sole proprietorships has been lower than the employment rate for all businesses. Conversely, in times of prosperity, the employment growth rate for sole proprietorships has been much greater than the growth rate for all businesses. In other words, small businesses stabilize us in bad times and spur us on in good times.

VI. According to the now well-known study done at the Massachusetts Institute of Technology in 1979 called the Job Generation Process, we now know that small business creates about 60 percent of all new jobs each year in this country. This has been determined by tracking the employment patterns of 5½ million U.S. businesses over eight years' time, using Dun and Bradstreet records.

The tremendously significant fact here, of course, is that the majority of all new jobs in the United States always originate in smaller firms—businesses with less than 100 employees. In other words, the small business sector keeps America working.

Every state in the country, Tennessee included, loses about eight percent of its job base each year because of business failures or contractions, so that business sector-the small business sector-which is able to constantly regenerate, replace, re-establish new jobs quickly is that sector to whom we really owe much of our economic stability. Any growth in numbers of jobs each year is truly dependent on small businesses' ability always to give us at least that slight edge we need by creating more new jobs each year than the number so old jobs we lose automatically each year.

In summary, after analyzing 5½ million Dun and Bradstreet business records, the results show that:

(A) on the average about 60 percent of all jobs in the U.S. are generated by firms with 20 or fewer employees.

(B) about 50 percent of all these jobs are created by independent small entrepreneurs; and

(C) large firms (those with over 500 employees) generate less than 15 percent of all net new jobs. (Source: "The Job Generation Process," David L. Birch, MIT Program on Neighborhood and Regional Change, Cambridge 1979.)

VII. Approximately 8,000 small businesses were started in Tennessee during the last 5 years. This represents about a 10 percent increase in business starts. Nonetheless, the bankruptcy rate for businesses in this state is also high. Tennessee ranks 12th in the country in numbers of business failures, with about 1,600 firms declaring insolvency last year.

Mr. SASSER. Mr. President, it is time we took proper notice of the role these small establishments play in maintaining our economy and the significant impact they have on our employment picture. We need to work with these small firms in an effort to ease our unemployment burden.

Admittedly, the targeted jobs tax credits are not without problems. Businesses often do not know such credits exist or find the paperwork and procedures involved to cumbersome.

I believe our legislation does away with some of these difficulties.

In particular, S. 371 requires that qualified unemployed individuals be certified as such by a local government employment agency. Thus, when the employee goes to an employer who wants to use this credit, the employee has already been certified as eligible. The current certification process under the targeted jobs tax credit is one of the major obstacles to making use of these credits. With or preemployment certification process, I believe our bill succeeds in making use of this credit far more attractive to a small firm.

In closing, Mr. President, let me point out that this type of tax credit is becoming quite a popular legislative item. President Reagan, in his state of the Union address, and in his budget summary, has made known his interest in jobs tax credits for the long-term unemployed. I am pleased that the President has seen the wisdom of this type of approach and applaud his embracing this concept.

But we all know, Mr. President, that it will take more than words to help our Nation's unemployed and small businesses, S. 371 is a solid legislative proposal refining the Tax Code in order to arm our Nation's businesses with the economic weapons they need in the need in the battle against recession and unemployment.

I urge my colleagues to give their expeditious and favorable consideration to enactment of the Targeted Jobs Tax Credit Amendments of 1983. I ask unanimous consent that the full text of S. 371 be printed immediately following the conclusion of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 371

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Targeted Jobs Tax Credit Amendments Act of 1983."

SEC. 2. TAX CREDIT FOR HIRING OF CERTAIN UNEMPLOYED INDIVIDUALS.

(a) QUALIFIED UNEMPLOYED INDIVIDUAL.—Paragraph (1) of section 51(d) of the Internal Revenue Code of 1954 (defining members of targeted groups) is amended—

(1) by striking out "or" at the end of subparagraph (I);

(2) by striking our the period at the end of subparagraph (J) and inserting in lieu thereof ", or"; and

(3) by inserting after subparagraph (J) the following new subparagraph:

"(K) a qualified unemployed individual.".

(b) DEFINITION AND SPECIAL RULES.—Subsection (d) of section 51 of such Code is amended—

(1) by redesignating paragraphs (13), (14), (15), and (16) as paragraphs (14), (15), (16), and (17), respectively; and

(2) by inserting after paragraph (12) the following new paragraph:

"(13) QUALIFIED UNEMPLOYED INDIVIDUAL.—

"(A) IN GENERAL.—The term 'qualified unemployed individual' means an individual who is certified by the designated local agency as—

"(i) unemployed since January 1, 1982, or

"(ii) having exhausted all rights to regular unemployment compensation under a State law approved by the Secretary pursuant to section 3304, and

"(iii) having no rights—

"(I) to unemployment compensation (including both regular compensation and extended compensation) under such law or any other State unemployment law, or

"(II) to compensation under any other Federal law (including the Federal Supplemental Compensation Act of 1982),

with respect to the week immediately preceding the date on which such individual was first employed by the taxpayer (and as not being paid or entitled to be paid any additional compensation under such State or Federal law with respect to such week).

"(B) EXHAUSTION OF BENEFITS DEFINED.—For purposes of subparagraph (A)(ii), an individual shall be deemed to have exhausted his right to regular compensation under a State law when—

"(i) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period; or

"(ii) his rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

"(C) AMOUNT OF CREDIT INCREASED IN CERTAIN CASES.—For purposes of applying this subpart—

"(i) in the case of a taxpayer which—

"(I) is located in a labor market area determined by the Secretary of Labor to have a rate of unemployment in excess of the average national rate of unemployment for each of the three months immedately preceding the date of enactment of this paragraph, and

"(II) employs a qualified unemployed individual who resided in such area prior to the date on which such individual was hired by such taxpayer.

subsection (a)(1) shall be applied by substituting '65 percent' for '50 percent'; and

"(ii) in the case of a taxpayer that is a small business concern (within the meaning of section 3(a) of the Small Business Act (15 U.S.C. 632(a)), subsection (a)(1) shall be applied by substituting '75 percent' for '50 percent'.".

SEC. 3. CONFORMING AMENDMENTS.

(a) Clause (ii) of section 51(d)(12)(A) of such Code (relating to qualified summer youth employee) is amended by striking out "paragraph (14)" and inserting in lieu thereof "paragraph (15)".

(b) Subparagraph (C) of section 51(d)(12) of such Code is amended by striking out "paragraph (14)" and inserting in lieu thereof "paragraph (15)".

SEC. 4. EFFECTIVE DATES.

The amendments made by this Act shall apply to amounts paid or incurred after the date of the enactment of this Act in taxable years beginning after such date and before the close of the first calendar year after such date in which the national unemployment rate equals 6.5 percent or less as determined by the Department of Labor.●

By Mr. HATFIELD (for himself, Mr. PACKWOOD, and Mr. HOLLINGS):

S. 372. A bill to promote interstate commerce by prohibiting discrimination in the writing and selling of insurance contracts, and for other purposes; to the Committee on Commerce, Science, and Transportation.

FAIR INSURANCE PRACTICES ACT

● Mr. HATFIELD. Mr. President, today, I wish to introduce legislation which will promote interstate commerce by prohibiting discrimination in the writing and selling of insurance contracts. I am please to have my distinguished colleagues, Senators PACKWOOD and HOLLINGS join me on this legislation.

Mr. President, despite progress in combating sex discrimination in America society over the past decade, significant gaps remain. Perhaps none is so large and pervasive as that discrimination which occurs in the insurance marketplace.

This provision recognizes a national policy which has been appropriately reaffirmed over the past 20 years: That discrimination on the basis of race, color, religion, sex, or national origin is unfair and unlawful. In the proposed Nondiscrimination in Insurance Act, which is a part of the Economic Equity Act, that policy is stated. As it should be; for it is fundamentally unfair to stereotype individuals on these bases. Different and unequal treatment of like individuals cannot be tolerated in the employment sector. Neither can it be tolerated in the insurance marketplace.

In the abstract, continuation of discriminatory policies in insurance is discouraging. But in its practical ramifications, it is even more distressing. For in an era in which over 40 percent of the work force is women—and some 60 percent of those women work out of economic need—denial of access to insurance at fair rates can have severe economic consequences.

For example, today there are reported to be 7.7 million single-parent families headed by women. These families are wholly dependent on females for financial support. Yet, the availability and scope of insurance for them are minimized and the rates often maximized because of their sex. This policy can effectively prohibit women from achieving the basic insulation from financial loss which is the benefit of insurance.

This is only one example of the effects of a sex-based classification in insurance. Cited here are a few others as they occur in various types of insurance:

In disability, many types of insurance benefits available to men are not available to women. While coverage has improved over the past few years, in some States, disability coverage is not available to women on any terms, at any price. In other States where it is available, its cost is significantly greater.

In health, waiting periods are usually much longer for women, and benefit periods shorter. According to a report on sex discrimination in insurance prepared by the Women's Equity Action League, it is not uncommon to find that, despite higher premiums paid by women, the benefits they receive are much lower. Pregnancy coverage, despite its centrality to women's insurance needs, is often unavailable.

In life insurance, coverage for women is often limited in scope and availability. Certain options, commonly available to men, have been restricted to women.

The same justification for differential rates can be made for discrimination against blacks because white persons as a group have a longer life expectancy than black persons as a group. However, such discrimination is now, and should be, totally rejected.

It must be understood that there is no objection to basing a life insurance policy on longevity. However, if sex is the only criterion used to determine longevity, it is clearly unfair and relatively unreliable. Instead of merging sex with all the other criteria affecting life expectancy, the industry has chosen to concentrate exclusively on it. The industry has virtually ignored other, more accurate classification criteria, such as smoking habits, family health history, physical condition, recreational and occupational activities.

Recent investigations have demonstrated that some employer-sponsored life insurance charged women more for pension coverage on the assumption they would live longer, but charged them as much as men for life insurance. They thus ignored sex differences when they would have helped women. According to a study completed by Dr. Charles Laycock, a University of Chicago law professor, some companies make a smaller allowance for sex differences in life insurance, where the difference helps women, than in annuities, where the difference helps men.

Two years ago the Supreme Court, in the so-called Manhart decision, ruled it unlawful to treat "Individuals as simply components of a racial, religious, sexual or national class." While this ruling applies only to employer-operated insurance plans, the proposed bill expands the prohibition to private and individual plans, as well.

The insurance industry has claimed that some 19 States have already adopted a model regulation of the National Association of Insurance Commissioners which supposedly accomplishes the same objective as this legislation. Thus, the need for Federal legislation is eliminated, according to the industry.

However, this model regulation does not touch on the aspects of disparate rates and benefits—merely availability and scope. And even this incomplete regulation was watered-down further by several of the 19 States which eventually adopted it. If it is discovered that the States are indeed doing their jobs with respect to offering fair and just insurance policies and rates, and enforcing such, I would have no hesitancy to withdraw my support for this legislation. The bill is designed to encourage the States to adopt nondiscriminatory policies.

It is important to stress here that the Nondiscrimination in Insurance Act will in no way remove authority from the States to regulate the insurance industry. No Federal mechanism for administration or enforcement is established, and not one bureaucrat would spring into being as a result of this bill.

Classification by sex is clearly not a business necessity, as some parts of the insurance industry would have us believe. It was adopted by the industry only 30 years ago as a convenient, though incomplete, method of classifying risks. While it may require minor cost adjustments in some policies and practices, such an argument cannot be used as a defense for discrimination.

Again, researchers have helped dispel a myth commonly touted by the insurance industry; that if sex differences are ignored, one sex will subsidize the other, the subsidizing sex will quit buying insurance, throwing off the necessary balance in insurance pools. If that were true, according to Professor Laycock, we would have encountered the same problems with respect to all the other groups for which the insurance industry does not compute separate actuarial tables.

We have discussed previously the differential in longevity statistics between blacks and whites. But whites have not quit buying life insurance. Rich people live longer than poor people, but rich people have not quit buying life insurance. The difference in life expectancy between highly and poorly educated women is greater than the difference between the sexes, but educated women have not quit buying life insurance. The difference in life expectancy between married and single men is greater than the difference between the sexes, but married men have not quit buying life insurance.

These and other examples demonstrate that differences in group averages of this magnitude do not cause many members of the lower risk group to go uninsured, and no unmanageable problems result. Where unisex automobile insurance is used, as it has been in three States, it has worked; no unmanageable problems result, and rate changes between the sexes have been insignificant.

I am hopeful that it will not require the pressure of the courts, of civil rights and women's groups, and of the public opinion, to convince the insurance industry to treat its policyholders without discrimination on the basis of sex. Support of a significant number and type of groups representing the public, including the American Association of University Women, the AFL-CIO, the National Federation of Business and Professional Women, as well as the Leadership Conference on Civil Rights, are supportive of this legislation. I will use that support to help assure that a policy adopted by Congress some 16 years ago will also be applied in the insurance marketplace.●

● Mr. PACKWOOD. Mr. President, the traditional civil rights policy of the United States is that no individual shall be treated differently because of his or her membership in a racial, sexual, religious or ethnic group. This policy has been applied under Federal laws or by the courts to employment, credit, housing, public accommodations, transportation, recreation, voting and athletics. I am a strong supporter of this policy and I believe it should be extended to the business of insurance.

I am pleased to again join Senator HATFIELD in introducing the Fair Practices in Insurance Act which will prohibit discrimination in insurance and annuities on the basis of race, color, religious, sex or national origin. Last year's bill, S. 2204, was favorably reported from the Senate Commerce Committee which I chair. As chairman of that committee I intend to move expeditiously to hold hearings on the bill and to again report the bill. I believe that the bill will be considered by the full Senate this year and I predict it will become law.

S. 2204, as reported last year is supported by civil rights organizations including the Women's Equity Action League, the Federation of Business and Professional Women's Clubs, the American Association of University Women, the National Women's Political Caucus, the National Organization for Women, as well as the Leadership Conference on Civil Rights, senior citizen groups, and the AFL-CIO and other labor organizations. I encourage my Senate colleagues to join as cosponsors of this landmark legislation.●

By Mr. MURKOWSKI (for himself, Mr. STEVENS, Mr. JACKSON, and Mr. GORTON):

S. 373. A bill to provide comprehensive national policy dealing with national needs and objectives in the Arctic; to the Committee on Governmental Affairs.

ARCTIC RESEARCH AND POLICY ACT OF 1982

● Mr. MURKOWSKI. Mr. President, today I am reintroducing the Arctic Research and Policy Act, a bill which was unanimously reported out of the Governmental Affairs Committee last year and which passed the Senate

unanimously late in the 97th Congress. I am pleased that Senators STEVENS, JACKSON, and GORTON have once again joined me as cosponsors in this effort.

Mr. President, it is a sad but true fact that the United States is the only polar Nation without a coordinated effort to conduct necessary scientific research in the Arctic. It is important to note that we do conduct such an effort in the Antarctic, where a comprehensive policy guides research efforts in order that inefficiencies and duplication will not occur. Why do we bother to plan and coordinate our Federal scientific efforts in the Antarctic, while we fail to do so in the Arctic where vast American energy resources exist and U.S. citizens live?

This situation in and of itself troubles me greatly; but it is even more troubling in light of the fact that the Soviet Union is engaged in a massive effort to study the Arctic and its potential from a strategic and economic point of view. We are lagging behind.

Across the Bering Strait thousands of Soviet scientists are moving toward the consolidation of Soviet defense systems. They are rapidly developing new technologies to produce oil, gas, and strategic minerals in Arctic regions. They are also developing and integrating their Arctic transportation systems. The testimony received during 2 days of hearings before the Senate Governmental Affairs Committee indicated that the Soviets have 20,000 to 25,000 scientists engaged in Arctic research. Reports indicate that Soviet offshore oil and gas exploration is supported by research in over 170 scientific institutes. The Soviet naval fleet includes 37 Arctic research vessles and 19 icebreakers. In contrast, the United States has no Arctic research vessel and the five icebreakers in the fleet are rarely used for research. As it was so aptly put by one distinguished witness at one of the hearings held last year, there may be enough research underway in the Arctic, but only if you include what the Soviets are going.

I believe it is important to note that we have attempted to administratively create an Arctic science policy in the past—but efforts dating back nearly 20 years have failed. Back in the 1960's, Alaska's Senator Bob Bartlett, a member of the Senate Appropriations Committee, noted a disparity between the funding the United States directed toward the Arctic compared with the Antarctic. Then, as now, we were directing a significantly greater amount of scientific funding to the Antarctic. Indeed, we have a scientific research policy in the Antarctic, mandated by administrative action—OMB Circular A-51. All such attempts to do so in the Arctic have failed. For instance, after a 3-year effort, a U.S. policy statement agreed to by all concerned Federal agencies was still sitting unsigned on President Johnson's desk when he left office in 1968.

That same year, at the request of the Department of State, the Office of Science and Technology and the Federal Council of Science and Technology, the Interagency Arctic Research Coordinating Committee (IARCC) was established to insure the sound development and coordination of Federal research programs in the Arctic. In the absence of a guiding research policy, the IARCC foundered and was disbanded in 1978.

In 1971, the National Security Council adopted an instrument—NSD memorandum 144—to create an Interagency Arctic Policy Group to be established for a development of a coordinated plan for scientific research in and on the Arctic. This memorandum was reaffirmed by NSD memorandum 202 in 1973. Despite the fact that these instruments mandated the creation of an Arctic research policy, no such policy exists today. As the study of U.S. Arctic research policy, also known as the 1007 report, states on page 9:

> NSDMs 144 and 202 definately stated a U.S. desire to develop a coordinated plan for Arctic research, but investigation shows that the intentions of the memoranda have never been implemented to define mechanisms for the funding and management of Arctic research . . . the U.S. lacks an explicit Arctic research policy and, therefore, does not have a tightly coordinated Arctic research program.

Mr. President, the bill I am introducing today will finally bring an end to this litany of failure. It would create an Arctic Science Policy Council and an Arctic Research Commission to create and implement a comprehensive Arctic science policy. The Council, composed of five Presidential appointees representing State and Federal Government interests, would develop the integrated policy and facilitate cooperation between the U.S. Government and international, State, and local entities. The nine member Arctic Research Commission, selected by the Council and consisting of scientists, Arctic residents, and industry representatives, would survey existing research programs and identify research needs. It would then grant money for research to meet those needs. The Commission would also create an Arctic Information and Data Retrieval Center to become a central clearinghouse for Federal research data.

I understand the sensitivity of many of my colleagues toward the creation of a new governmental entity in the face of the severe budget restraints we face. I want to assure my colleagues that I share that concern. But I believe it is important to put that expense into perspective. I believe the budgetary impact of this legislation is minimal when compared to the commercial value and Federal tax revenues that would accrue as a result of the careful development of the Arctic based on well designed research as provided under this bill. The primary commercial resources in the Arctic region—as it is defined under this bill—are mineral and fisheries resources. To illustrate this point, I will insert an excerpt from the Governmental Affairs Committee Report (No. 97-660):

> 1. MINERAL RESOURCES
>
> According to the National Petroleum Council's Report on Arctic Oil and Gas, released in December 1981, the Arctic contains 24 billion barrels of recoverable but undiscovered oil in addition to 109 trillion cubic feet of natural gas. Other sources have estimated that Alaska contains over one-third of the total U.S. onshore reserves of oil, and almost 60 percent of total U.S. offshore reserves of oil. Moreover, some estimates of total reserves of natural gas both on and offshore in the Alaskan Arctic range as high as 260 trillion cubic feet.
>
> Although measured coal resources in the Alaskan Arctic are relatively low due to the fact that area has not yet been fully explored, there is a hypothetical geological potential for over 1.5 trillion tons of coal to exist in Alaska north of the Arctic Circle.
>
> High to moderate potential "hard-rock" (metallogenic) mineral deposits extend in a wide band across the Arctic region in Alaska. Gold, silver, lead, zinc, copper, platinum, tin, tungsten, asbestos, chromium, molybdenum, barite, beryllium, and fluorite are known to exist in the region. Preliminary exploration indicates that uranium minerals may exist in the Arctic. The strategic and monetary value of these reserves to the United States is undoubtedly immense.
>
> 2. ALASKAN FISHERIES RESOURCES
>
> Alaska leads the Nation in the value of fish landings. It provides 25 percent of the Nation's total value of fish landed. In 1981, Alaska landings were worth $639 million and products were worth about $1.5 billion. Most of these landings occurred in Bristol Bay, one of the Arctic's richest fishing grounds, which lies within the territory covered by this Act.
>
> In addition, Alaska has the largest underutilized fishing resource in the Nation. Of the total 2.6 million metric tons of exploitable fishing resources in the Fisheries Conservation Zone (FCZ) of the United States, 2.0 metric tons lie off Alaska. Only .4 of the 2.0 million metric tons are presently utilized by the U.S. fishing fleet, and for the most part, this resource lies in the region north of the Aleutian chain that is covered by this Act.
>
> Alaska provides 70 percent (or about $624 million) of the Nation's export of U.S. fishery products (excluding products from "joint venture" operations with foreign nations). Over half of the Nation's fish exports are salmon products, most of which originate from the Bristol Bay area, also covered by this Act.
>
> It is difficult to measure the assets that will accrue to the Federal Treasury as a direct and indirect result of the development of Arctic fisheries, but it is certain that they will be substantial.

The stakes are high indeed, Mr. President.

The Arctic Research and Policy Act, in the form that I am reintroducing it

today, enjoys nearly unanimous support from the many Federal agencies which conduct Arctic research. I believe it is also important to note that the Office of Management and Budget does not object to the enactment of this bill, which is testimony to the fact that the modest outlays this bill would authorize—no more than $25 million per year in Federal funds plus some State funds and conceivably even some private funds—are worthwhile outlays.

I could go on a good deal more, Mr. President, because there is a good deal more to say. I will instead ask unanimous consent that excerpts from Senate Report 97-660 be placed in the RECORD at this point in order to provide the useful details that are beyond the scope of this floor statement. I would further ask that the text of the Arctic Research and Policy Act appear following my remarks just prior to the report.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 373

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Arctic Research and Policy Act of 1982".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds and declares that—

(1) the Arctic, onshore and offshore, contains vital energy resources that can reduce our dependence on foreign oil and improve the national balance of payments;

(2) as our only common border with the Soviet Union, the Arctic is critical to national defense;

(3) the renewable resources of the Arctic, specifically fish and other seafood, represent one of the Nation's greatest commercial assets;

(4) Arctic conditions directly affect global weather patterns and must be understood in order to promote better agricultural management throughout the United States;

(5) industrial pollution not originating in the Arctic region collects in the polar air mass, has the potential to disrupt global weather patterns, and must be controlled through international cooperation and consultation;

(6) the Arctic is the only natural laboratory for research into human adaptation, physical and psychological, to climates of extreme cold and isolation and may provide information crucial for future defense needs;

(7) atmospheric conditions peculiar to the Arctic provide a unique testing ground for research into high-latitude communications, which is likely to be crucial for future defense needs;

(8) Arctic marine technology is critical to cost-effective recovery and transportation of energy resources and to the national defense;

(9) most Arctic-rim countries, particularly the Soviet Union, possess Arctic technologies far more advanced than those currently available in the United States;

(10) Federal Arctic research is fragmented, uncoordinated and undercapitalized at the present time;

(11) such fragmentation has led to the neglect of certain areas of research and to unnecessary duplication of effort in other areas of research;

(12) there is an immediate need to formulate a comprehensive national policy to organize and fund currently neglected scientific research with respect to the Arctic;

(13) the Federal Government, in cooperation with State and local governments, should focus its efforts on the collection and characterization of basic data related to biological and geophysical phenomena in the Arctic, directing special attention to the broad accumulation of data related to seaice dynamics;

(14) research into the long-range environmental and social effects of development in the Arctic is necessary to mitigate the adverse consequences of such development to the land and its residents;

(15) Arctic research has significant value for expanding knowledge of the Arctic which can enhance the lives of Arctic residents, increase opportunities for international cooperation among Arctic-rim countries and foster a national policy for the Arctic; and

(16) the Alaskan Arctic provides essential habitat for marine mammals, migratory waterfowl, and other forms of wildlife which are important to the Nation and which are essential to Arctic residents.

(b) The purposes of this Act are—

(1) to establish an Arctic Science Policy Council and an Arctic Research Commission to promote Arctic research;

(2) to establish a centralized system for the collection and retrieval of scientific data with respect to the Arctic; and

(3) to establish priorities and provide financial support for basic and applied scientific research with respect to the Arctic that is currently being neglected and is essential to our Nation's needs.

ARCTIC SCIENCE POLICY COUNCIL

SEC. 3. (a) There is established a council to be known as the Arctic Science Policy Council (hereafter in this Act referred to as the "Council").

(b) The Council shall be composed of the following members:

(1) A chairperson appointed by the President, with the advice and consent of the Senate.

(2) Two individuals from the State of Alaska who have demonstrated a knowledge and interest in the field of Arctic Research, appointed by the President from a list of individuals submitted by the Governor of the State of Alaska. The President in his or her discretion may request additional names to be submitted.

(3) Two individuals who have demonstrated a knowledge and interest in the field of Arctic Research, appointed by the President from lists submitted by the Secretary of Commerce, the Secretary of Defense, the Secretary of the Interior, the Secretary of the Department of Energy, the Secretary of State, the Secretary of Transportation (on behalf of the Coast Guard) and the Director of the National Science Foundation. The President in his or her discretion may request additional names to be submitted.

(c) Each member shall have an equal vote on matters decided by the Council.

(d)(1) Except as provided in paragraph 2, the term of office for a member of the Council shall be two years.

(2)(A) Of the members of the Council originally appointed under paragraphs (2) and (3) of subsection (b), one member appointed under paragraph (2) of such subsection, and one member appointed under paragraph (3) of such subsection shall be appointed for a term of one year.

(B) A member may serve after the expiration of his term of office until the President appoints a successor.

(e)(1) A member of the Council not otherwise employed by the United States shall be compensated at a rate equal to the daily equivalent of the rate for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day such member is engaged in the actual performance of his duties as a member of the Council.

(2) A member of the Council who is an officer or employee of the United States or of the State of Alaska shall serve without additional compensation.

(3) All members of the Council shall be reimbursed for travel (in accordance with 5 U.S.C. 5701) and other necessary expenses incurred by them in the performance of their duties as members of the Council.

(4) No member may be compensated for more than ninety days of service each year in performance of his or her duties as a member of the Council.

DUTIES OF COUNCIL

SEC. 4. (a) The Council shall—

(1) facilitate cooperation between the Federal Government and State and local governments with respect to Arctic research;

(2) coordinate and promote cooperative Arctic scientific research programs with other nations (in consultation with the Secretary of State);

(3) develop and supervise an integrated national Arctic science policy (except with respect to the areas of authority specifically reserved to the Arctic Research Commission under section 7 of this Act);

(4) appoint the members of the Arctic Research Commission; and

(5) cooperate with the Governor of the State of Alaska and with such agencies and organizations of the State as the Governor may designate with respect to the formulation of Arctic science policy.

(b) Not later than January 31 of each year, the Council shall—

(1) publish a statement of goals and objectives with respect to Arctic research to guide the Arctic Research Commission in the performance of its duties; and

(2) submit to Congress a report describing the activities and accomplishments of the Council during the immediately preceding calendar year.

COOPERATION WITH THE COUNCIL

SEC. 5. (a)(1) The Council may acquire from the head of any Federal agency unclassified data, reports, and other nonproprietary information with respect to Arctic research which the Council considers useful in the discharge of its duties.

(2) Each such agency shall cooperate with the Council and furnish all data, reports, and other information requested by the Council to the extent permitted by law.

(b) The Council may utilize the facilities and services of any Federal agency (with the consent of the appropriate agency head, with or without reimbursement), taking every feasible step to avoid duplication of research and effort.

ARCTIC RESEARCH COMMISSION

SEC. 6. (a) There is established a commission to be known as the Arctic Research Commission (hereafter in this Act referred to as the "Commission").

(b)(1) The Commission shall be appointed by the Arctic Science Policy Council and shall be composed of the following members:

(A) Four members shall be appointed from among individuals with expertise in representative areas of research relating to the Arctic (including, but not limited to, the physical, biological, and social sciences), at least one of whom shall be employed by the University of Alaska.

(B) Two members shall be appointed from among residents of the Arctic who are representative of the needs and interests of Arctic residents and live in areas directly affected by Arctic resource development.

(C) Two members shall be appointed from among individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

(D) One member shall be appointed from among individuals familiar with the Arctic and employed by the United States Coast Guard.

(2) Upon the appointment of the members of the Commission pursuant to paragraph (1), the Council shall designate a member of the Commission to be chairperson of the Commission.

(c)(1) Except as provided in paragraph (2), the term of office for a member of the Commission shall be four years.

(2) Of the members of the Commission originally appointed under paragraph (1) of subsection (b)—

(i) two shall be appointed for a term of one year;

(ii) two shall be appointed for a term of two years;

(iii) two shall be appointed for a term of three years; and

(iv) three shall be appointed for a term of four years.

(3) A member may serve after the expiration of his term of office until the Council appoints a successor.

(d)(1) A member of the Commission not otherwise employed by the United States shall be compensated at a rate equal to the daily equivalent of the rate for GS-16 of the General Schedule under section 5332 of title 5, United States Code, for each day such member is engaged in the actual performance of his duties as a member of the Commission.

(2) A member of the Commission who is an officer or employee of the United States or the State of Alaska shall serve without additional compensation.

(3) All members of the Commission shall be reimbursed for travel (in accordance with section 5701 of title 5, United States Code) and other necessary expenses incurred by them in the performance of their duties as members of the Commission.

(4) No member may be compensated for more than one hundred and eighty days of service each year in performance of his or her duties as a member of the Commission.

DUTIES OF COMMISSION

SEC. 7. (a) The Commission shall—

(1) survey Arctic research conducted by Federal and State and local agencies, the University of Alaska and other universities, and other private and public institutions to determine priorities for future Arctic research, and make recommendations thereon to the Council and other interested parties;

(2) establish a data collection and retrieval center for Arctic research (which shall be located in the State of Alaska) and promulgate guidelines for the use and dissemination of Arctic research information;

(3) make grants for such Arctic research as the Commission deems necessary and desirable to further the goals and objectives published annually by the Council pursuant to section 4(b)(1), with special consideration being given to studies in neglected areas of Arctic research; and

(4) consult the Council with respect to—

(A) all proposed, ongoing, and completed research programs and studies funded by the Commission,

(B) recommendations proposed by the Commission with respect to future Arctic research, and

(C) guidelines for awarding and administering Arctic research grants.

(b)(1)(A) Not later than December 31 of each year, the Commission shall transmit to the Council a report describing the activities and accomplishments of the Commission during the immediately preceding calendar year and making recommendations with respect to future Arctic research policy.

(B) Such report shall be available for public inspection at reasonable times.

(2) Not later than March 31, 1983, the Commission shall submit to Congress and to the Legislature of the State of Alaska a report making recommendations with respect to the continued operation of Government-operated laboratory facilities conducting Arctic research, taking into account the efficiency and effectiveness of such facilities and the degree to which the operation of such facilities would result in the duplication of research and effort.

(c) The Commission shall cooperate with the Governor of the State of Alaska, and with such agencies as the Governor may designate with respect to—

(1) the recommendations proposed by the Commission pursuant to section 7(a)(4)(B);

(2) the planning, funding, and logistical support of Arctic research; and

(3) the storage, transfer, and dissemination of Arctic scientific and technological knowledge and data.

ADMINISTRATION OF THE COMMISSION

SEC. 8. The Commission may—

(1) in accordance with civil service laws and subchapter III of chapter 53 of title 5, United States Code, appoint and fix the compensation of an Executive Director and such additional staff personnel as may be necessary;

(2) procure temporary and intermittent services as authorized by section 3109 of title 5, United States Code;

(3) enter into contracts and procure supplies, services, and property; and

(4) enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Commission and the Administrator of the General Services Administration.

STATE ELECTION

SEC. 9. (a) The State of Alaska may elect to participate or not to participate in the activities of the Council and the Commission.

(b) Failure of the State of Alaska to contribute to the Arctic Research Fund (established by section 10 of this Act) for a fiscal year an amount equal to one-quarter of the amount appropriated to such Fund by the United States for the previous fiscal year shall constitute an election by such State not to participate in the Council and the Commission.

(c) Upon an election by the State of Alaska not to participate in the Council and the Commission pursuant to subsection (b)—

(1) appointments to such Council or Commission which are required to be made from among individuals—

(i) employed by the State of Alaska, or

(ii) nominated by the Governor of the State of Alaska

shall be vacated; and

(2) an appointment to fill a vacancy created by such election shall be made in such manner and from among such individuals as other appointments to such Council or Commission are required to be made (as determined by the chairperson of the Council or Commission).

(d) An election by the State of Alaska not to participate in the Council and the Commission pursuant to subsection (b) shall not affect the powers or duties of those bodies.

(e) Should the State of Alaska wish to reinstate its participation following an election not to participate, it may do so by meeting the funding requirement for the year in which reinstatement is sought.

ARCTIC RESEARCH FUND

SEC. 10. (a) There is hereby created a trust fund to be known as the Arctic Research Fund (hereafter in this Act referred to as the "Fund"), to be available for the support of the activities of the Arctic Science Policy Council and the Arctic Research Commission.

(b) Such Fund shall consist of—

(1) amounts appropriated to such Fund;

(2) amounts contributed to such Fund by the State of Alaska;

(3) amounts contributed by private individuals and organizations.

(c) Amounts in the Fund shall be available, until expended, for the purposes of this Act, to the extent and in such amounts as are provided for in advance in appropriation Acts.

(d)(1) There is authorized to be appropriated for the Arctic Research Fund for the fiscal year beginning October 1, 1983, and for each succeeding year thereafter, $25,000,000.

(2) In determining the amount contributed to such Fund by the State of Alaska for a fiscal year—

(A) the fair market value (as determined by the Council in good faith) of all facilities, services, materials, and other support contributed to the Fund by the State of Alaska during such fiscal year, and

(B) all amounts contributed by private individuals and organizations,

shall be taken into account.

DEFINITION

SEC. 11. The term "Arctic" shall mean all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas; and the Aleutian chain.

PURPOSE OF THE ACT

The Arctic Research and Policy Act of 1982 establishes administrative mechanisms to create and implement a comprehensive national Arctic research policy. This establishes an Arctic Science and Policy Council and an Arctic Research Commission to promote Arctic Research; sets up a centralized system for collection and retrieval of scientific data with respect to the Arctic; and

provides financial support for basic and applied Arctic research.

II. BACKGROUND AND NEED

A. Summary

The Arctic has received increasing attention over the past few years. The discovery of vast amounts of energy and mineral resources and the concurrent need to develop these resources quickly, yet with a minimal impact on the land and its residents, accounts for much of this attention. Additionally, the Arctic represents our only common border with the Soviet Union. Agricultural scientists are concerned with the Arctic because the polar air mass has a significant effect on global climate and weather patterns. As attention has grown, one fact has become clear: there is a surprising lack of scientific data on which to base decisions with immense financial and environmental consequences.

There are approximately 15 Federal agencies currently conducting some form of Arctic research, as well as State agencies, universities, private industry and local governments. Surprisingly, there is very little communication among these groups, and consequently there is a long history of duplicative and unnecessary research. Meanwhile, other areas in which research is badly needed are neglected. A corollary problem is that Arctic scientific data is collected in widely diverse places and is often difficult to obtain.

The Arctic will become even more important to the United States in the decades ahead. Energy industry experts have predicted that as much as half of our Nation's future domestic oil supplies will come from Alaska and its offshore fields. The Federal Government must share in the responsibility of ensuring that this development is undertaken in a reasonable, responsible manner that minimizes environmental disruption and the impacts of development on Arctic residents, particularly the indigenous Native people who depend on the Arctic ecosystem for much of their subsistence needs.

In addition, there is new scientific evidence showing increasing concentrations of atmospheric carbon dioxide from the burning of fossil fuels worldwide and the presence of industrial pollutants from northern Europe and the Soviet Union in the high Arctic. These findings have caused concern that a "greenhouse effect" might raise global temperatures enough to partially melt the polar ice caps, change sea levels and create deserts out of currently producing agricultural areas. Another possibility is that the presence of carbon dioxide and other pollutants could trigger a global cooling trend which could conceivably begin a new ice age. In either case, increased research in the high Arctic will be necessary, and international cooperation will be essential in solving this problem.

Since the Arctic represents our only common border with the Soviet Union, defense-related research is critical. Research into geophysics, commercial fisheries, health and human adaptation, marine technology, agricultural production and biology is also needed. Specific research needs are listed later in this report.

This Act is not an attempt to create a new "super agency" to dictate to Federal agencies what their scientific research goals in the Arctic should be. On the contrary, existing agencies should greatly benefit from the centralization of research data. The Act is also not a substitute for the funding of existing research projects underway in the Arctic. The purpose of this Act is to fund currently neglected areas of research essential to the Nation's needs that might not lie solely within the purview of any Federal agency. The Act is also not an attempt to conduct State research under a Federal aegis: National needs and interests are the focus of the Act. However, since there is some spill-over benefit to the State of Alaska, it was felt that the State should contribute to the Arctic Research Fund created by the Act in return for a proportional degree of policy input.

The Committee received overwhelmingly favorable testimony representing the views of Federal, State, and local governmental agencies, private industry, Native interests, academia, environmental protection groups and individuals. In sum, 37 agencies, corporations, groups, or individuals submitted oral and/or written testimony.

It is clear that a wide variety of national and international interests will be affected by what occurs in the Arctic in the coming decades. From the standpoint of energy resources, the Arctic may well contain immense quantities of oil and gas for the 21st century. In terms of fisheries resources, the Arctic will continue to provide protein for millions.

It has been observed that the United States is not "planning" society. Too often, emerging national needs are met by ad hoc efforts, and new research is undertaken with every new effort. Duplication and inefficiency, with their associated costs to society and the taxpayer, are the result. This has been the case in the U.S. Arctic. This duplication, inefficiency, and uncertainty should not be allowed to continue. This legislation is designed to implement a cooperative and comprehensive Arctic planning policy.

B. History of the efforts to create a national Arctic research policy

Congress attention was first directed toward the lack of a comprehensive national Arctic research policy in the 1960's when E. L. "Bob" Bartlett, a Senator from Alaska and a member of the Senate Appropriations Committee, noted a disparity between the funding of Antarctic projects and Arctic projects, Senator Bartlett reasoned that since the United States was an Arctic-rim nation, Arctic research should be given the same or greater attention as research in the Antarctic. Ironically, there is a U.S. scientific Antarctic mandated by administrative action (OMB Circular A-51). All administrative attempts to create and implement an Arctic science policy have failed. After a 3-year effort, a U.S. policy statement agreed to by all concerned Federal agencies was never approved by President Johnson.

That same year, at the request of the Department of State, the Office of Science and Technology, and the Federal Council of Science and Technology, the Interagency Arctic Research Coordinating Committee (IARCC) was established to ensure the sound development and coordination of Federal research programs in the Arctic. In the absence of a guiding research policy, the IARCC foundered and was disbanded in 1978.

In 1977 the Inuit Circumpolar Conference was formed by indigenous peoples of Greenland, Canada, and Alaska to focus on the need for cooperative Arctic policy. The ICC passed a resolution to urge all of their governments to begin developing balanced Arctic policy measures. Their efforts have continued up to the present time.

In 1971, the National Security Council adopted NSD Memorandum 144 which created an Interagency Arctic Policy Group to develop a coordinated plan for scientific research in the Arctic. This memorandum was reaffirmed by NSD Memorandum 202 in 1973. Despite the fact that these instruments mandated the creation of an Arctic research policy, no such policy exists today. As *The Study of United States Arctic Research Policy* (mandated by Section 1007 of Public Law 96-487, the Alaska National Interest Lands Conservation Act) states on page 9:

"NSDM's 144 and 202 definitely stated a U.S. desire to develop a coordinated plan for Arctic research, but investigation shows that the intentions of the memoranda have never been implemented to define mechanisms for the funding and management of Arctic research * * * the United States lacks an explicit Arctic research policy and, therefore, does not have a tightly coordinated Arctic research program."

The most recent administrative attempts to create an Arctic research policy have also failed. The Interagency Arctic Policy Group (IAPG), drafted an Arctic Study Report which might have become the foundation of a comprehensive Arctic policy. In January 1982, disagreements between the IAPG agency-members stiffled the issuance of the Final Report. Senator Murkowski of Alaska introduced S. 1562 on July 31, 1981. The measure was initially cosponsored by Senator Stevens of Alaska and Senator Jackson of Washington. S. 1562 was later cosponsored by Senator Gorton of Washington.

C. Scientific research needs in the Arctic

At the request of the Senate Committee on Governmental Affairs, the Office of Technology Assessment prepared a series of staff discussion papers designed to identify key research needs. Additionally, the General Accounting Office Report on the development of Alaskan Energy Resources, which is discussed more fully later in this report, identified other research needs. Finally, hearing testimony and other materials submitted for the record indicated topics for research.

The degree of Federal responsibility to participate in the conduct of the research mentioned below varies. Clearly, the private sector, State and local governments, Alaska Native Corporations and Associations, and Colleges, Universities, and Research Institutes conduct a great deal of this research and should continue to be involved. This list is not all-inclusive and only illustrates the range of Arctic research needs.

The Committee does not intend, by including this list, to suggest that all of these research topics must be a part of any Arctic research agenda nor to imply that more research in any areas listed must be conducted. Rather, the list is included to indicate the breadth of research which is being, or may be, conducted and which should be better coordinated as provided under the legislation.

1. Research Needs Related to Offshore Oil and Natural Gas Development

There have been numerous studies identifying research needs for the development of offshore Arctic resources, including those of the Polar Research Board, the Marine Board and the Marine Transportation Research Board; all of the National Academy of Sciences. These studies have been undertaken for the Department of Interior, Department of Transportation, and the Department of Energy, among others. The Arctic Research Program of the National Science Foundation has also contributed to the Federal effort. Industry, through the

Alaska Oil and Gas Association (AOGA), has sponsored investigations of specific problems. Groups such as the Alaska Eskimo Whaling Commission have conducted environmental investigations.

The Federal role in the past has in part been one of cooperation with industry. Petroleum industry projects have included the use of government laboratories and expert personnel. Some programs which benefit both industry and government have been jointly managed and funded. Policies to encourage future cooperation among government, industry and Arctic residents will help ensure long range commitments to research in the complex Arctic environment.

Continuing study is needed of the engineering properties of sea ice, including single-year, multiyear, and conglomerate ice. The dynamics of the interractions of sea ice with ships and marine structures during wave driven storm conditions are critical, as is the collection of ice keel and ice scour data and analysis of ice-sea floor interaction dynamics. The effects of the force of large ice features, such as pressure ridges, on test structures needs to be better understood through field studies. The Committee wants to emphasize that continuing dialog with the indigenous people of the Arctic, is critical to a complete understanding of Arctic conditions.

Many benefits would accrue from the development, evaluation and acquisition of remote sensors, both aircraft and satellite mounted. These could provide ice and meteorological data and other information required for navigation, communications, resource development, and environmental monitoring.

More ice breaking research north of the Bering Straits is needed before year-round marine transport can be considered reliable or environmentally acceptable. Both the Coast Guard and industry energy production systems would benefit from this research.

Basic biological research must be done to determine the effect of oil pollution on the food chain, and to test various models for oil clean-up. In addition, sociocultural research into the consequences of resource development on the lifestyle of the residents should be undertaken.

Above are only a few examples of problem areas related to Arctic offshore development. Development is now in very early stages, and as activities expand in the future, research needs will also increase.

2. Research Needs Related to Onshore Oil and Natural Gas Development

Although there has been onshore development and production of oil and natural gas, there remain some areas ripe for research. Current resources estimates suffer from limited understanding of the basic geology and geophysics of the Arctic. Continuation of efforts to secure an extensive geological data base, using geophysical and remote sensing techniques, would support a better understanding of geological conditions and would be helpful for future exploration efforts.

The large gas hydrate resources found in the Arctic could greatly extend the production life of the North Slope if economic ways to extract the hydrates from the permafrost could be found without damaging the physical environment. Similarly, research on producing heavy viscous oil would be useful since normal methods of steam drive may damage the permafrost.

Although seismic exploration, the principal method for oil and gas exploration, is used extensively in the Arctic there are still unknowns about the effects of permafrost on the attenuation or distortion of seismic signals. Better understanding of low frequency wave propagation through the frozen ground as a function of temperature and depth of the permafrost is necessary.

3. Research Needs Related to Solid Energy Fuels

If large scale peat harvesting becomes possible in the Arctic and sub-Arctic regions of Alaska, research will be needed to find ways to avoid damaging the permafrost and tundra in which the peat lies. Peat utilization will require research into gasification solidification and liquefaction technologies particularly suited to the Alaskan environment. Of special interest would be small systems that could be used at the site of use.

Research into synthetic fuel production from the large Arctic coal reserves would also be valuable. Special problems include the effects of large scale water removal to supply steam for the synthetic fuel production, and the effects of large scale heat dissipation (from the process plant) on permafrost regions.

Prior to any large construction of, for example, synfuel plants, or facilities to convert natural gas to methanol, research is needed into the behavior of permafrost, the properties of moisture-laden soil around large structures and the protection of wildlife habitat. Currently, gravel pads and pile foundations are used to support most structures at Prudhoe Bay. Chemical processing plants there or in the sub-Arctic may have to be set directly in the ground on pilings. The thawing and refreezing of the ground can cause severe problems. Improved research into frozen ground soil mechanics is essential if large construction is to take place in frost sensitive soils.

4. Research Needs Related to Energy Conversion

Much of the research appropriate to development of energy conversion and chemical processing is related to contruction, water removal, and heat dissipation described earlier. There are other areas of value.

Waste disposal techniques encounter special problems in the Arctic and sub-Arctic. The effects of waste materials on soil composition should be examined. Better monitoring of the air quality in the regions and examination of potential pollutants will be useful in setting air quality criteria. Finally, if a chemical processing industry is set up in Alaska, it will be useful to examine the effect of the cold climate on continuous operation of chemical processes.

5. Research Needs Related to Energy End Use and Conservation

Research into building techniques and siting in the Arctic and sub-Arctic will be helpful in creating more energy-efficient buildings. Research into building and insulating materials to reduce heat loss in Arctic and sub-Arctic buildings will be of continuing value in temperate regions of the United States as well.

The development of on-site energy systems using peat, coal or other biomass resources will require research into siting, waste disposal, pollution control and transportation on a small scale. Such research has wide applicability to conditions in the 48 contigious States as well.

6. Research Needs Related to the Development of Coal and Hard-Rock Minerals

Since there is currently no large-scale commercial mining underway, little is known about the operational problems and impacts of Arctic and sub-Arctic mining. The only exception is the onshore and offshore extraction of sand and gravel, where additional research is needed on the impacts of removal on the physical environment, Arctic residents, fish and wildlife, and water resources and quality.

Information from pipeline construction and oil and gas activities is useful, but there are important differences between these projects and mining. Additional research is therefore needed. Because Arctic mineral development is not expected to be commercially viable in the near future, the opportunity exists to compile baseline information on climate, wildlife, hydrology, permafrost, and vegetation and to test on a small scale the effects of disturbances similar to those created by large scale operations. The success of mitigation and reclamation efforts can be evaluated before decisions are made about approving commercial-size mines, or regulating their operations.

Analysis of Arctic and sub-Arctic mining operations in other countries should be conducted. Initial Alaskan development projects should be monitored closely and information derived from these experiences shared with prospective developers, local residents, and government agencies.

Government and private efforts in mineral exploration and assessment would benefit from improvements in the application of mineral surveying technologies such as remote sensing, satellite and aerial photography, geochemical analyses, and seismology over large unexplored areas. An inventory of potential mineral resources is necessary for land management. Exploration and mapping activities by government agencies at the current pace could go on for a long time before most of Alaska is surveyed. If more cost-effective and efficient methods were developed, the time and effort required to complete surveying would be reduced.

Each phase in the life of a commercial mining venture has different requirements for access to lands. In exploration, large areas are surveyed to identify promising mineral areas for more intensive examination. During development, personnel and equipment must be brought to the site. During commercial extraction, more personnel, equipment, and supplies may be necessary. Finally, the product must be shipped to processing and marketing facilities. There is a need to develop suitable types of transportation to support each phase of commercial activity.

Expanded access, however, has potential consequences for conservation units (e.g., National Parks, Fish and Wildlife Refuges, etc.), the natural environment, and local communities. Additional work must be done to identify these impacts, their extent, and possible mitigation strategies. This research would assist in selection of access modes best suited to the needs of the mineral developer and to protection of the environment.

In its announcement of planned leasing of offshore areas for mineral development, the Department of the Interior noted that the areas would not be leased before environmental studies were completed. Additional research is required to identify potential impacts of offshore mining, and to identify any special technological requirements for such operations. So far, no significant offshore mining of minerals has occurred in Arctic waters. The importance of the areas for subsistence economic activities, and the

possibility of adverse impacts on wildlife and fisheries must remain a top priority for research.

7. Research Needs Related to the Development of Arctic Fisheries

Data on Arctic and sub-Arctic ground fisheries has been gathered for a relatively short period of time, and knowledge about them is limited. Consequently, there is a considerable need to continue data collection and analysis for research purposes as well as for determining proper catch allocations. Good information provides a sound basis for understanding population dynamics upon which fishery management decisions can be based.

Research, including data collecting and model building, to obtain projections of optimum yield for long time periods would be valuable. It would provide information to the fishing industry on which to base decisions about capitalization for new vessels and processing facilities. Planning the capital formation and construction of fishing ships takes considerable time. Additional research to enable the Department of Commerce to provide quantitative long range forecasts of allowable catches 2 to 3 years ahead would reduce financial risks and enable industry to make better use of its funds and manpower. In addition, research into fish processing techniques to prevent deterioration would greatly improve the U.S. fishing industry's operations and economic viability.

Progress has been made in using sonar systems as a management tool for estimating populations of certain species. However, use of sonar for minimizing incidental catch could be better developed. Further research is necessary to reduce the survey costs associated with stock assessment and to improve incidental catch avoidance techniques.

For fish canning, research into inspection procedures and requirements could minimize defective can closure and associated risks. Spectrometric examination techniques might detect certain types of faults. Research is needed to find more effective ways to pinpoint specific batches contaminated in the canning process so that effects on other fishery products can be minimized.

The Committee notes with interest the recent development of commerical halibut fishing in the Bering Sea. Local fishermen landed over 8,000 pounds of halibut in 1982, which made the fishery economically self-sufficient. Fishery ventures of this kind should be encouraged. One way to encourage development is to accumulate basic data about the resource, and about general ocean and climate conditions.

Continued Federal support for science and technology efforts in developing Arctic and sub-Arctic fisheries will help manage a valuable natural resource and benefit an important industry. The coordination of research by industry, the military, local residents and scientists on such topics as offshore energy, oceanography, weather and climate, and engineering in the Arctic environment would benefit fishery development as well. Since Federal science programs are scattered among several agencies, a policy that provides a mechanism to coordinate them would bring savings in many areas.

8. Research Needs Related to Weather, Climate, and Arctic Pollution

Both short term and long term research is needed to improve understanding of the cause and effect mechanisms of Arctic weather; and more information is required to improve forecasting capabilities. Some types of research problems require multination participation because of the wide expanse of territory involved. Observational programs require improvements in instrumentation. Especially in the far North, remote weather monitoring stations using satellite data transfer are needed to gather information required for improvements in regional weather forecasting. In addition, forecasting techniques for Arctic regions, including the prediction of marine conditions and shoreline storm surges, require development.

There is a need to monitor, survey, and forecast ice conditions, especially the time of Arctic ice break-up. Shipping, fisheries, and resource development industries, the Coast Guard and Arctic residents would all benefit from this effort. Shore located, aircraft mounted, and satellite systems would make up the monitoring system.

The Federal Government, under coordination of the Department of Commerce, now supports several important programs, in cooperation with other countries, with a goal of understanding and predicting global climate. Research in the Arctic region is a key to reaching this goal.

Continuing development of global and regional climate models is reqauired to permit forecasting of climatic changes with scientific confidence. Large scale Arctic meteorological-oceanographic heat balance observation programs are necessary to provide data for these models.

Continuing observation programs are necessary to monitor climate trends (i.e., open water observations for a long period). Polar orbiting satellites equipped with ice measureing sensors and sensors for weather/climate and sea condition measurements could collect data over large areas.

Knowledge concerning the indigenous peoples of the Arctic is a unique science resource that could be developed to better understand all aspects of the climate in the Arctic.

Scientists at the Lawrence Berkely Laboratory have recently discovered that the Arctic is polluted with large concentrations of black soot particles and pollutants which did not originate in the Arctic Some computer models suggest that a catastrophic "greenhouse effect" might occur as a result of these pollutants. The resulting rise in global temperature could, it is speculated, partially melt the polar ice caps, seriously affect the distribution of rainfall and create arid conditions in currently producing agricultural areas. The amelioration of this problem will certainly require international scientific cooperation.

9. Research Needs Related to Human Health and Habitation in the Arctic

Improving technologies, such as building engineering, is a valuable service to local residents. Information transfer and the adaptation of existing methods are part of the process; so is identifying and implementing small-scale technologies to suit the scattered population.

In the area of basic research, even though much work has been done, additional data about soil properties and mechanics, especially erosion and permafrost, are needed. This information will improve building design and construction and assist in the engineering of roads, airports, and similar facilities. Erosion—the retreat of beaches and banks along the Arctic coast—is a continuing problem. In populated areas, such as Barrow, erosion has been accelerated by the use of coastal deposits for onshore construction (e.g., road and airport fill). Knowledge about tundra erosion is needed as well.

Another topic where basic research would be useful is the particular hydrological properties of the Arctic water cycle. Topics such as the interaction of factors like temperature and flooding need to be explored. For example, the Department of the Interior, in its December 1981 Sec. 1007 ANILCA report, notes that its researchers were unable to sample some streams to determine fisheries potentials because of high water conditions that caused excessive turbulence and turbidity.

In surveying rivers and lakes to identify potential winter water availability and to ascertain the location of hazards such as overflowing ice, Interior Department investigators found that river flows fluctuated widely. A better understanding of the factors contributing to such conditions would be helpful before water treatment plants are installed.

Applied research is critical if technologies are to be appropriately adopted. Especially advantageous are small-scale technologies that address immediate problems. The use of synthetic insulation in place of gravel for protection of the permafrost under buildings is an example. Another is the substitution of incineration or biodegradation for traditional sewage treatment.

10. Research Needs Related to Arctic Transportation

The needs for transportation research in the Arctic span a broad spectrum. They range from basic questions about the Arctic environment and physical phenomena that affect transportation technology to programs of how to plan and implement specific modes of transportation in support of economic development and human habitation.

Because large areas of the Arctic have not been systematically studied, basic geological and physical information about the region is lacking. For example, data on tides are not available for many parts of the Beaufort Sea, largely because there are so few inhabitants along the coast and unmanned data collection equipment has never been installed. Satellite-based mapping and survey equipment has added to the fund of geophysical information, but this needs to be supplemented with on-site, detailed observation before highways, railroads, or port facilities are built. In general, there is little basic information about the land and its climate and ecosystems—information is taken for granted in the lower-48 States.

Another major subject on which information is lacking is how to construct roads, rail lines, or pipelines without damage to the permafrost ar tundra. Not enough is known about the peculiar soil mechanics, thaw stability, and freeze properties of the Arctic lands and about the behavior of construction materials in this environment. Research is needed as well on the long-term performance of roadways.

Without this basic knowledge, the development of surface transportation infrastructure could be unsuccessful, unduly costly, or damaging to the Arctic ecosystem. Similar risks would be encountered in any attempt to make extensive use of land vehicles that do not require a road bed, since they may be even more destructive of soil and vegetation.

What information is available on the Arctic environment is not always adequately disseminated among those seeking to apply transportation technology in Alaska. Information exchange among countries sharing

the northern polar regions (Canada, Scandinavia, the Soviet Union) is not extensive. Research and applications carried out in these countries would be put to use in Alaska if there were a clearinghouse for sharing information.

Research needs for Arctic marine transportation must take into account the need for environmental protection. For example, field data needed on the size and occurrence of pressure ridges and associated ice keels and on the mechanics and statics of ocean floor ice scouring. The nature and strength of various types of multi-year ice are not well known and the ice impact forces on ships moving through stormy, ice-filled waters need extensive study. Other research topics include methods of reducing icing on ships in Arctic waters, and large-scale modeling techniques for ships operating in ice containing pressure ridges.

The practicality of transporting crude oil by pipeline in the Arctic has been demonstrated by the Trans-Alaska Pipline. Research needs, however, will arise when future pipelines are considered. One critical area is understanding the thaw stability of the soil down to depths of about 50 feet. This knowledge would assist future pipeline construction, and would be useful for large construction projects. Proposed pipeline routes traverse all the known physiographic provinces of the Arctic. Continued study of these regions is necessary to support pipeline design and construction. Of special importance are the effects of pipeline river crossings on fish movement and of above-ground pipelines on the migration patterns of wildlife.

Extraction of coal will require hauling facilities to move coal to ports. New road or rail construction will, like pipelines, need data concerning biological patterns and soil mechanics. Again, continued generic research about the wetlands and tundra would benefit all efforts to expand transportation systems.

11. Research Needs Related to National Defense

The United States has never fought a war in the Arctic, or under Arctic conditions. Our principal potential adversary, the Soviet Union, has not only won wars in the Arctic, but has won them because of Arctic conditions. Testimony in the hearings before the Committee underscored the lack of defense-related research currently underway in the Arctic.

Reserarch may need to be conducted concerning the performance of "smart" weapons under ice-fog conditions or intense aurora display, the effects of high latitude space disturbances on orbital or over-the-horizon surveillances, the effects of snow and permafrost on seismic and acoustic vehicle and personnel detection devices, the construction of underground command posts and power plants in permafrost areas, the protection of pipeline installations from terrorist attack or seizure, auroral effects on military space systems, the effects of high altitude nuclear detonation in auroral regions, and, in general, research related to the defense of the U.S. Arctic.

12. Arctic Research Needs Related to Agriculture

The Office of Technology Assessment published "Impacts of Technology on U.S. Cropland and Rangeland Productivity" in August, 1982. That report states that 18.5 million acres of Alaska land are suitable for agricultural production. In addition, there are 100 million acres of tundra suitable for reindeer grazing that are currently unused. These facts only begin to convey the potential for Arctic land to support grain production and to produce high-quality protein.

The technologies that will permit development of Alaska's agricultural potential may also be applicable to agricultural problems in more temperate zones, particularly northern tier states of the continental United States.

D. Arctic research in the Soviet Union and other Arctic rim nations

Testimony presented at the hearings on S. 1562 pointed to the fact that the United States is behind other Arctic-rim nations in most aspects of scientific research in the Arctic. The Soviet Union, for instance, employs 20,000-25,000 scientists in Arctic research initiatives. This massive Soviet effort involves many institutions. No less than 170 Soviet scientific institutes are now involved in research related to offshore energy deposits. Of course, since the Soviet Union has no "private sector," these comparisons cannot be made directly, but they make clear the vast scope of Soviet research efforts in the region.

Testimony was also received by the Committee which pointed out the lack of U.S. ice-strengthened research vessels. Since the Arctic is a largely ocean-covered region, ice-strengthened research vessels are crucial to the conduct of Arctic Research. The Soviet Union has over 20 ice-strengthened research vessels. Canada has more than nine; Norway, more than eight. The United States has one, which is used mainly in the Antarctic. This comparison illustrates the relative strengths of the research programs of Arctic-rim nations.

E. Principal economic and commercial resources in the Arctic

The Federal budgetary impact of this legislation is minimal when compared to the commercial value (and Federal tax revenues) that could accrue as a result of careful development of the Arctic based on well designed research as provided under this bill. The primary commercial resources in the Arctic region (as defined in this act) are mineral and fisheries resources.

1. Mineral Resources

According to the National Petroleum Council's Report on Arctic Oil and Gas, released in December 1981, the Arctic contains 24 billion barrels of recoverable but undiscovered oil in addition to 109 trillion cubic feet of natural gas. Other sources have estimated that Alaska contains over one-third of the total U.S. onshore reserves of oil, and almost 60% of total U.S. offshore reserves of oil. Moreover, some estimates of total reserves of natural gas both on and offshore in the Alaskan Arctic range as high as 260 trillion cubic feet.

Although measured coal resources in the Alaskan Arctic are relatively low due to the fact that area has not yet been fully explored, there is a hypothetical geological potential for over 1.5 trillion tons of coal to exist in Alaska north of the Arctic Circle.

High to moderate potential "hard-rock" (metallogenic) mineral deposits extend in wide band across the Arctic region in Alaska. Gold, silver, lead, zinc, copper, platinum, and fluourite are known to exist in the region. Preliminary exploration indicates that uranium minerals may exist in the Arctic. The strategic and monetary value of these reserves to the United States is undoubtedly immense.

2. Alaskan Fisheries Resources

Alaska leads the Nation in the value of fish landings. It provides 25% of the Nation's total value of fish landed. In 1981, Alaska landings were worth $639 million and products were worth about $1.5 billion. Most of these landings occured in Bristol Bay, one of the Arctic's richest fishing grounds, which lies within the territory covered by this Act.

In addition, Alaska has the largest underutilized fishing resource in the Nation. Of the total 2.6 million metric tons of exploitable fishing resources in the Fisheries Conservation Zone (FCZ) of the United States, 2.0 metric tons lie off Alaska. Only .4 of the 2.0 million metric tons are presently utilized by the U.S. fishing fleet, and for the most part, this resource lies in the region north of the Aleutian chain that is covered by this Act.

Alaska provides 70% (or about $624 million) of the Nation's export of U.S. fishery products (excluding products from "joint venture" operations with foreign nations). Over half of the Nation's fish exports are salmon products, most of which originate from the Bristol Bay Area, also covered by this Act.

It is difficult to measure the assets that will accrue to the Federal Treasury as a direct and indirect result of the development of Arctic fisheries, but it is certain that they will be substantial.

F. GAO Report: "Developing Alaska's Energy Resources: Actions Needed To Stimulate Research and Improve Wetlands Permit Processing"

On June 17, 1982, the General Accounting Office issued a report entitled: "Developing Alaska's Energy Resources: Actions Needed To Stimulate Research and Improve Wetlands Permits Processing." The highlights of that Report are as follows:

Additional research is needed to evaluate the impacts of oil and gas-related activity in Alaska as a basis for promoting environmentally sound approaches for future development without unnecessarily increasing its cost.

Congress should provide for three critical elements—coordination, prioritization, and the source of funding—when considering legislation to establish an Arctic research policy.

The Arctic research issue is being addressed in a bill pending before Congress. This bill (S. 1562) seeks to provide a comprehensive research policy to deal with national needs and objectives in the Arctic. GAO concurs that S. 1562 could help provide the basis for filling the gaps in our knowledge of the Arctic.

According to the GAO report the Interior Department has encountered severe difficulties in justifying and implementing many of its Arctic policies and responsibilities because of inadequate, wasteful, duplicative and incomplete research.

GAO concludes that Federal revenues could be enhanced and production possibilities increased with the addition of a broader range of basic scientific data that does not now exist and is not currently being conducted by any agency.

In the Committee's view, this report strengthens the arguments for more effectively planned and implemented Federal research in the Arctic. The Committee believes this legislation represents a timely legislative response to the problems specified in the GAO report.

Mr. STEVENS. Mr. President, today Senator MURKOWSKI is introducing the Arctic Research and Policy Act, which I am again pleased to cosponsor. I would like to remind the Senate that this bill was passed unanimously by the Governmental Affairs Committee last year, and also passed the Senate by unanimous consent.

In the past several years, the U.S. Arctic has rapidly increased in strategic importance. The need to develop the Arctic's vast amount of natural resources quickly and safely, and the close proximity of the Soviet Union, have focused national attention on this previously unknown area. As this attention has grown, one fact has become clear: There is a shocking lack of scientific data on which to base decisions with immense financial and environmental consequences.

There are approximately 15 Federal agencies currently conducting Arctic research, as well as State agencies, universities, private industry, and local governments. Surprisingly, there is very little communication among these groups and, consequently, there is a long history of duplicative and unnecessary research. Meanwhile, other areas in which research is badly needed are neglected. A corollary problem is that Arctic scientific data is collected in widely diverse places and is often difficult to obtain.

The Arctic bill addresses these problems in three ways. First, it sets up two administrative bodies: one to set policy goals and to act as a liaison among State, Federal and international governments, and the other to implement those goals in the field by funding and supervising specific research. Second, the bill directs the Commission to establish a center for collection and retrieval of Arctic science data. Finally, the act establishes a trust fund to provide grant money for basic and applied research that is currently neglected but is essential to our Nation's needs.

At this point, I want to mention a few things that the Arctic bill is not:

First, it is not an attempt to set up a super agency to dictate to Federal agencies what their goals in the Arctic should be. Instead, existing agency programs should benefit from the centralizing of research data.

Second, it is not a substitute for funding of existing scientific research projects in the Arctic. The act specifically says that part of its purpose is to fund neglected areas of research that are essential to our Nation's needs.

Third, it is not an attempt to conduct State research under a Federal aegis. The definition of the Arctic covers less than one-third of Alaska, and a substantial amount of foreign territory in which the United States is permitted to conduct research by foreign governments. In addition, the act specifically indicates that national needs and interests are the focus of the act. However, since there is some spillover benefit to the State of Alaska, it was felt that the State should contribute to the trust fund in return for a proportional degree of policy input. All indications from the State of Alaska are that it will wholeheartedly support the bill, financially and politically.

The bill directly affects the interests of a wide variety of parties. At this point we feel we have reached a reasonable consensus. Among the supporters of this bill are Alaska's major oil and gas developer, SOHIO Alaska; several Native corporations; and the North Slope Borough, which represents the Arctic residents most directly affected by oil and gas development. GAO came out strongly in favor of this bill in its report, "Developing Alaska's Energy Resources: Actions Needed to Stimulate Research and Improve Wetlands Permit Processing," printed on June 17, 1982. OMB and the State of Alaska are both in support of the bill as presently drafted. All affected Federal agencies have responded favorably. Finally, all of the scientists who have contacted us are in favor of the bill. In short, there is near unanimity of opinion that this bill is necessary and long overdue.

At this point, I would like to insert into the RECORD an excerpt from a letter received by the chairman of the Senate Governmental Affairs Committee, the Honorable WILLIAM V. ROTH, from John B. Slaughter, Director of the National Science Foundation:

With particular reference to the provisions of this bill, the foundation strongly supports the need for a continued steady level of research in the polar regions balanced among the relevant scientific disciplines, and we recongnize the continuing need of mission agencies to pursue research and development projects essential to their mission performance. The additional input on desired emphases and priorities for Arctic research that would be provided by the proposed Council will undoubtedly assist the several mission agencies to design their contributions to Arctic research while, at the same time, preserving the essential pluralism of Federal agencies' existing Arctic research programs.

In closing, I would like to express on behalf of the National Science Foundation our support for the Arctic Research and Policy Act of 1982, as amended on September 2, and to pledge that we will cooperate with the proposed Council and Commission when they have been established. The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the President's program and supports the passage of this bill.

By Mr. DIXON:

S.J. Res. 26. Joint resolution proposing an amendment to the Constitution authorizing the President to disapprove or reduce an item of appropriations; to the Committee on the Judiciary.

LINE ITEM VETO CONSTITUTIONAL AMENDMENT

Mr. DIXON. Mr. President, I rise today to introduce a constitutional amendment. I do not do so lightly. I believe constitutional solutions to problems should be considered only as a last resort, only in situations where the problem is extremely serious, of great magnitude, of a continuing nature, and where a statutory solution is impossible.

Our budget problems meet this definition. Deficits have risen from under $5 billion in 1963 to over $110 billion in fiscal year 1982. The estimate for fiscal 1983 is even worse, over $200 billion, and the deficits over the next few fiscal years could exceed $1 trillion. The budget has only been balanced once in the past 20 years. And as the deficit projections show, the problem is not getting better; it is getting worse.

Past Congresses and Presidents have condemned these increasing deficits and Congress has taken a number of steps to try to improve its ability to deal with the budget crisis. The most important of these was probably the passage of the Budget Act. That act forced Congress to consider the budget as a whole and created procedural mechanisms to help the Congress to address budget problems.

The Budget Act was an important and useful step, but as the evidence of what can only be called terrifying budget deficits shows, the Budget Act has been totally inadequate to deal with the budget crisis we are currently facing.

The Senate recognized this fact last year, Mr. President, and passed Senate Joint Resolution 58, the so-called balanced budget constitutional amendment. Passage of the resolution clearly indicated the Senate's judgment that further statutory changes simply would not be adequate.

The amendment set out an objective on which everyone could agree. It is clear that Federal spending needs to be restrained and that we cannot continue to spend money that we simply do not have.

However, last year's balanced budget amendment had a number of problems. One of the principal problems was that it put the entire burden of balancing the budget on Congress. I realize that the power of the purse resides in Congress, and, therefore, Congress must play the primary role. But I also know it is difficult for the 535 Members of Congress collectively to provide the leadership necessary to bring the budget back into balance.

Mr. President, I think that the solution is to bring the President of the United States into the budget process to a much greater degree. Only the President can provide the leadership necessary to solve our overriding fiscal problems.

The constitutional amendment I am introducing today gives the President a new toll to help him provide the leadership needed in the budgetary process, and that tool is the item veto.

The item veto is not a new idea. In fact, the first proposal to add an item veto provision to the Federal Constitution was introduced, believe it or not, in 1876. Since that tie over 140 line item veto proposals have been introduced in Congress. However, Congress never acted on any of the proposals, and only once was there ever even a hearing on the idea.

Form this history it might appear that the line item veto is a bad idea or at least a very unpopular, politically unworkable idea. A closer look, however, proves exactly the opposite.

Forty-three—43 of the 50 States—have item veto provisions in their State constitutions, many of these provisions dating back to the Civil War era.

The States have item veto provisions in their constitutions because they think they are needed; because they work, and because they strengthen the budgeting process. An item veto provision helps to reduce logrolling and reduces the number of riders on appropriation bills.

I know these practices are dear to the hearts of many legislators, but they work to undermine the ability of Congress to budget in a fiscally sound and in an effective manner.

I have not been in Congress for a very long time but, Mr. President, I have been in politics now for over 33 years, and a major portion of that time has been spent in legislative bodies. I spent 12 years in the Illinois House of Representatives, 8 years in the Illinois State Senate, and in both bodies served in leadership capacities; so I think I can speak from some experience in this area.

All too often, both here and back in Illinois, legislators attempt to put spending proposals opposed by the Executive into "must" legislation that the Executive cannot veto.

In Illinois, however, as in 42 other States, the Governor can do something about it. He has an option that the President of the United States does not have. His choice is not simply to either veto the entire bill or sign it; he can veto or reduce the individual item.

Mr. President, the amendment I am offering is designed to give the President of the United States the same options that the Governor of Illinois, and the Governors of 42 of the other 50 States have. It would allow the President to veto or reduce any item of appropriations, with the exception of items affecting the legislative or judicial branches, as an alternative to vetoing an entire appropriations bill. The procedure for override of an entire bill would not be changed. Vetoes or reductions of individual items of appropriation, however, would be able to be overridden by a constitutional majority—that is a majority of the Members duly chosen and sworn—rather than the two-thirds vote required to override the veto of a bill.

The amendment is sensible, well balanced, and greatly needed. It strengthens the President's role in the budget-making process without undermining the congressional power of the purse. It will help to restrain spending without upsetting the careful set of checks and balances among the three branches now contained in our Constitution.

Mr. President, I think it is worth examining this last point in somewhat greater detail, because I know how important a point it is. My amendment gives the President an additional option, enhancing his power in the appropriations area. But it also preserves the powers of Congress, by making it easier to override an item veto than the veto of an entire bill.

Under this approach, the President would be able to focus the attention of the Congress and the country on those particular items of spending he believed were wasteful, inappropriate, or unwise. Congress would then have to decide, as it does now, whether to insist on the particular spending proposal, the objections of the President to the contrary notwithstanding. However, it would not take an extraordinary majority to do so. A simple, constitutional majority would be sufficient.

The history of an urgent supplemental appropriations bill from the last Congress clearly demonstrates the need for this amendment. President Reagan vetoed that bill twice. At least five different versions of the bill were pending before the Senate at various times. While Congress and the President fought over the housing stimulus package and other issues in controversy, many programs not in dispute were either brought to a standstill or nearly so. Major parts of the Government once again went to the brink. Social security checks were nearly not mailed, thousands of Government employees were unnecessarily laid off, and many worthy and necessary Government activities were curtailed.

If the President had had the item veto power at his disposal, the legislative torture that the urgent supplemental bill went through would have been largely unnecessary. The President could have reduced those items of spending he considered too large, and vetoed those others he opposed altogether without having to veto items not in controversy. Debate, and public attention, would be clearly focused on the issues truly in controversy. The innocent hostages—programs not in controversy—could have been freed.

Mr. President, the item veto makes it possible for States to restrain spending growth. It provides a means to exercise effective discipline on State budgets. It is time to make use of the State experience at the Federal level, to take their example and put an item veto provision in the Federal Constitution. The item veto works, as the States have demonstrated.

The Senate had to struggle for days and go through the night into the morning to pass last year's tax bill, a bill that would have raised over its life about $100 billion. Yet, the amount it raises by taxing the people of this country every year over the next 3 years is probably significantly less than we could save by giving item veto power to the President of the United States of America.

Mr. President, I realize that this is a new and controversial idea, even though there is substantial experience with the concept at the State level. But I think it is a good idea, and moreover, that without its passage, it is very unlikely that we will be able to permanently solve our budget crisis.

I believe it is imperative, therefore, that we quickly begin to examine the item veto concept in this Congress. I am grateful for the commitment from the distinguished chairman of the Judiciary Committee, Senator THURMOND, and the distinguished chairman of the Constitution Subcommittee, Senator HATCH, to hold a hearing on this proposal. I believe it should get the closest possible examination. Such an examination, I am confident, will clearly demonstrate the merit and importance of prompt enactment of this amendment. I urge all my colleagues, therefore, to participate in the hearing process, and I urge the Senate, upon the conclusion of those hearings, to adopt the item veto amendment.

Mr. President, I ask unanimous consent that a copy of the resolution be printed in the RECORD at this point.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 26

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"ARTICLE —

"The President may reduce or disapprove any item of appropriation in any bill or joint resolution, except any item of appropriation for the legislative branch or the judicial branch of the Government. If a bill or joint resolution is approved by the President, any item of appropriation contained therein which is not reduced or disapproved shall become law. The President shall

return with his objections any item of appropriation reduced or disapproved to the House in which the bill or joint resolution containing such item originated. The Congress may, in the manner prescribed under section 7 of article 1 for bills disapproved by the President, reconsider any item disapproved or reduced under this section, except that only a majority vote of each House shall be required to approve an item which has been disapproved or to restore an item which has been reduced by the President to the original amount contained in the bill or joint resolution.".

ADDITIONAL COSPONSORS

S. 17

At the request of Mr. DOLE, the name of the Senator from Minnesota (Mr. BOSCHWITZ) was added as a cosponsor of S. 17, a bill to expand and improve the domestic commodity distribution program.

S. 19

At the request of Mr. DOLE, the name of the Senator from New York (Mr. D'AMATO) was added as a cosponsor of S. 19, a bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to assure equality of economic opportunities for women and men under retirement plans.

S. 62

At the request of Mr. SASSER, the names of the Senator from Vermont (Mr. LEAHY), and the Senator from Maine (Mr. MITCHELL) were added as cosponsors of S. 62, a bill to provide for the issuance of a commemorative stamp to honor the dedication of the Vietnam Veterans Memorial.

S. 107

At the request of Mr. THURMOND, the names of the Senator from Alabama (Mr. DENTON), and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 107, a bill to establish the Veterans' Administration as an executive department.

S. 120

At the request of Mr. DOLE, the names of the Senator from Pennsylvania (Mr. SPECTER), and the Senator from New York (Mr. D'AMATO) were added as cosponsors of S. 120, a bill to extend for 2 years the allowance of the deduction for eliminating architectural and transportation barriers to the handicapped and elderly.

S. 137

At the request of Mr. ROTH, the names of the Senator from Kentucky (Mr. FORD), and the Senator from Nebraska (Mr. ZORINSKY) were added as cosponsors of S. 137, a bill to amend the Internal Revenue Code of 1954 to continue to allow mortgage bonds to be issued.

S. 215

At the request of Mr. THURMOND, the name of the Senator from North Dakota (Mr. ANDREWS) was added as a cosponsor of S. 215, a bill to amend the Bail Reform Act of 1966 to permit consideration of danger to the community in setting pretrial release conditions, to expand the list of statutory release conditions, to establish a more appropriate basis for deciding on post-conviction release, and for other purposes.

S. 216

At the request of Mr. THURMOND, the name of the Senator from North Dakota (Mr. ANDREWS) was added as a cosponsor of S. 216, a bill to amend title 18, United States Code, to combat, deter, and punish individuals who adulterate or otherwise tamper with food, drug, cosmetic, and other products with intent to cause personal injury, death, or other harm.

S. 222

At the request of Mr. KASTEN, the name of the Senator from New York (Mr. D'AMATO) was added as a cosponsor of S. 222, a bill to repeal the withholding of tax from interest and dividends and to require statements to be filed by the taxpayer with respect to interest, dividends, and patronage dividends.

S. 249

At the request of Mr. PACKWOOD, the name of the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 249, a bill entitled the "Employee Educational Assistance Extension Act."

S. 274

At the request of Mr. DIXON, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 274, to insure that the total value received by a producer under a special payment-in-kind land conservation program is at least 85 percent of the basic county loan rate for a commodity.

SENATE JOINT RESOLUTION 5

At the request of Mr. THURMOND, the name of the Senator from Idaho (Mr. MCCLURE) was added as a cosponsor of Senate Joint Resolution 5, a joint resolution proposing an amendment to the Constitution relating to Federal budget procedures.

SENATE JOINT RESOLUTION 11

At the request of Mr. ROTH, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of Senate Joint Resolution 11, a joint resolution entitled "National Safety in the Workplace Week."

SENATE JOINT RESOLUTION 17

At the request of Mr. PRYOR, the names of the Senator from Maryland (Mr. MATHIAS), and the Senator from Oregon (Mr. HATFIELD) were added as cosponsors of Senate Joint Resolution 17, a joint resolution proposing an amendment to the Constitution to provide for the direct popular election of the President and Vice President of the United States.

SENATE CONCURRENT RESOLUTION 5

At the request of Mr. SASSER, the name of the Senator from Minnesota (Mr. DURENBERGER) was added as a cosponsor of Senate Concurrent Resolution 5, a concurrent resolution expressing the sense of the Congress that the Railroad Retirement Board and representatives of railroad employees and carriers should explore new methods of financing the railroad retirement program.

SENATE RESOLUTION 39—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON FOREIGN RELATIONS

Mr. PERCY, from the Committee on Foreign Relations, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 39

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Foreign Relations is authorized from March 1, 1983, through February 29, 1984, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $2,556,000 of which amount not to exceed $18,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 29, 1984.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent funds of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employee paid at an annual rate.

SENATE RESOLUTION 40—RELATING TO A DOMESTIC AND ECONOMIC SUMMIT

Mr. GRASSLEY (for himself, Mr. SYMMS, Mr. JEPSEN, Mr. BOREN, and Mr. HATCH) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 40

Whereas the welfare or our people as well as the prospects for world peace, stability and development in international trade will depend on the wisdom of our leaders to develop a long-term policy in opening chan-

nels of trade and investment while coping with rapid economic change; and

Whereas an urgent need exists in stabilizing exchange rates to encourage export opportunities as well as to provide stability in the financial marketplace; and

Whereas there is a need to remove self-imposed restrictions by our own government on our industrial and farm sector to enhance their competitiveness in gaining access to world markets; and

Whereas there is a need to declare a truce in export credit wars along with the elimination of agricultural subsidies with our trading partners; and

Whereas there is a need to protect the transfer of high technology that may give away the competitive advantage the United States should derive from its superior technology and efficiency; and

Whereas there is a need for a separate Cabinet-level office with Secretarial privileges to focus on international trade to coordinate the impact and consequences of political and foreign decisions on the overall economic and foreign trade well-being of the United States.

Resolved, That it is the sense of the Senate that the President should exercise immediately his authority to call for a Domestic Economic and Trade Summit to begin to shape trade policy that makes sense for our farmers, our industries and our trading partners in the 1980's. And that the composition of this Summit should be made up of a bipartisan group of individuals from our Government, business, labor, farm, and academic community to enhance the credibility of those policies both at home and abroad.

Mr. GRASSLEY. Mr. President, as we begin the 1st session of the 98th Congress, we are going to be faced with some critical issues relative to global economic and trade problems.

To meet these changes, the United States must develop new policies that serve our national interest and have a level of confidence for our farmers, our industries and our trading partners.

Today I am submitting for consideration a resolution to express the sense of the Senate, urging Presidential action in calling for an immediate domestic economic and trade summit to address the critical choices we must face in our long-term trade policies.

In a report to the President submitted by the Commission on International Trade and Investment Policy, dated July 1971, I would like to quote the following:

We face critical choices. The welfare of our people—perhaps even the prospects for world peace, stability, and development—will depend on the wisdom and the realism with which we and other countries adapt to the changed circumstances of the Seventies.

The next few years will determine:

Whether our people can enjoy the benefits of open channels of trade and investment while coping with the real human problems of adjusting to rapid economic change;

Whether the world will drift down the road of economic nationalism and regional blocs or will pursue the goal of an open world economy;

Whether the European Community and Japan will accept responsibilities commensurate with their economic power;

Whether we can evolve with our trading partners a sound international monetary system reconciling domestic and international economic objectives;

Whether developed and developing countries can mobilize the will and resources to cope with global problems of poverty, population, employment and environmental deterioration;

Whether we can seize new opportunities for improved political and economic relations with the communist world.

To meet these challenges, the United States must develop new policies that serve our national interest—A national interest which comprehends a prosperous and congenial world.

What we face today is not that different than the challenges faced in the 1970's.

Since the United States represents the biggest import market in the world and by and large we have made our market place available to our trading partners with relatively few restrictions, and as a result of the outcome of the GATT ministerial meetings, time has come to let our trading partners know that we are no longer willing to tolerate one-way streets.

The task of our political leaders is to understand the gravity of the position we are in and to begin to shape trade policies that make sense to our farmers, our industries, and our trading partners.

At this point, I would like to go back to the report to the President submitted by the Commission on International Trade and Investment Policy, dated July 1971, in which, I quote:

There are unmistakable signs in the United States of developing crisis of confidence in the system. The crisis is reflected in:

Mounting pressures in the United States for import restrictions as foreign-made textiles, clothing, shoes, steel, electronic products and automobiles penetrate our market;

Growing demands for retaliation against foreign measures which place American agricultural and other products at a disadvantage in markets abroad;

A growing concern in this country that the United States has not received full value for the tariff concessions made over the years because foreign countries have found other ways, besides tariffs, of impeding our access to their markets;

Labor's contention that our corporations, through their operations abroad, are 'exporting jobs' by giving away the competitive advantage the United States should derive from its superior technology and efficiency;

A sense of frustration with our persistent balance-of-payments deficit and a feeling that other countries are not doing their fair share in making the international monetary system work;

An increasing concern that the foreign economic policy of our government has given insufficient weight to our economic interests and too much weight to our foreign political relations; that it is still influenced by a 'Marshall Plan psychology' appropriate to an earlier period.

Overhanging these doubts and frustrations is the belief that we have lacked the sense of priorities and the organization to deal effectively with our foreign economic relations; that responsibilities in the Executive branch have been unclear and authority fragmented; that Congress and the private sector have not been adequately brought into the policy-making process; that effective machinery has not existed for integrating the interrelated parts into a coherent foreign economic policy that would serve our national objectives.

The new mood in the United States has not gone unnoticed abroad. Questions are being raised in Europe, Japan and other countries about the capacity of the United States to deal with its domestic economic problems and about the consistency and direction of its foreign economic policies.

Twelve years later we face exactly the same concerns expressed in the report. For that reason, on November 30, 1982, I wrote to President Reagan and plan to write him again shortly to suggest that he call together a bipartisan group of this country's government, business, labor, farm, and academic leaders to set out an agenda to discuss those issues which I have addressed in my resolution as well as other issues that have relative importance to the long-term economic and trade policies of this Nation.

I believe the President can take an important first step in defusing pressure for unwise executive or legislative action, with possible dire consequences globally, by calling for a domestic economic and trade summit. There is certainly no shortage of challenges that face us in the 1980's, however, as in the past when the American people have been put to the task they have shown the world they have no shortage of creative solutions to those challenges.

Mr. President, I ask unanimous consent that my letter to the President on this subject be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., February 1, 1983.

The PRESIDENT,
The White House, Washington, D.C.

DEAR MR. PRESIDENT: As you may recall, on November 30, 1982, I wrote to you asking that you call for an immediate Domestic Economic and Trade Summit.

I was pleased to learn from a letter received from Kenneth M. Duberstein of your staff stating, "The convening of a domestic economic and trade summit may well be a needed catalyst toward this end."

I was also deeply pleased that during your State of the Union message you cited the relative importance of this nation setting down a consistant, viable trade policy.

In conjunction with my earlier correspondence to you, I also sent my suggestion to members of the President's Export Council for their review and comments. I would like to share with you excerpts from those letters, as well as letters from Cabinet members:

"A conference which would draw attention to the trade difficulties we are facing in services, investments, high technology, agriculture, and other key trade sectors could

be extremely useful." Malcolm Baldrige, Secretary of Commerce.

". . . we fully support Senator Grassely's proposal that the President call together a bipartisan group of political, business and labor leaders, together with members of the academic community, to set an economic and trade agenda for the 1980's." Robin Broadfield, Vice President for International Affairs, National Association of Realtors.

"I have sent the enclosed letter to President Reagan suggesting that he convene a summit along the lines proposed by you." John P. Sachs, President, Great Lakes Carbon Corporation.

"I also agree with your idea concerning a Trade Summit, but I am concerned that in calling such a group together the small business community as well as the small farmer are not left out, as they usually are when such groups convene." Douglas F. Glant, President, Pacific Group.

"A meeting such as you suggest might help to produce some positive approaches to this complex problem and demonstrate to the rest of the world that the U.S. is concerned and seeking to effect a unified national approach to the foreign trade question." Robert G. Schwartz, Vice Chairman of the Board, Metropolitan Life Insurance Company.

"I am sure that Chairman J. Paul Lyet of the PEC would be willing to make a place in the agenda of the discussion of this topic and for airing solutions." K. Gordon Lawless, Senior Vice-President, Phifer International Sales, Inc.

". . . congratulations to you on your December 1 statement in the Congressional Record. This is one of the best and clearest statements of the complex problems and issues involved that I have seen to date." R. W. Fischer, Soypro International, Inc.

"It may indeed be useful to commission a group from the public and private sectors to study the options for long-run U.S. trade policy." Donald T. Regan, Secretary of the Treasury.

"Your proposal for a Domestic Economic and Trade Summit, therefore, is timely and I would support such an effort provided its agenda is oriented to the specific actions needed to stem the current riding tide of protectionism." J. B. Flavin, Chairman, Singer.

Based on the correspondence I received from the White House, members of the President's Export Council and from conversations with other individuals of varying backgrounds, I feel as strong and convinced as ever that this is a tool which you can use to defuse pressure for unwise Executive and Legislative action with possible dire consequences globally.

Your providing the leadership of bringing together a bipartisan group of government, business, labor, farm and academic leaders under one umbrella would go along way to restore a level of confidence in your Administration. If I may quote from your State of the Union message, "Americans who have been sustained through good times and bad by noble vision, a vision not only of what the world around us is today, but of what we, as a free people, can make it tomorrow." And I further quote from your message, "Back over the years, citizens like ourselves have gathered within these walls when our Nation was threatened; sometimes when its very existence was at stake. Always, with courage and common sense, they meet the crises of their time and lived to see a stronger, better, and more prosperous country." Now is the time to call these same forces into play under a Domestic Economic and Trade Summit to meet the crises of our time so that we and our children may live to see a stronger, better and more prosperous country and world.

Sincerely yours,

CHARLES E. GRASSLEY,
U.S. Senator.

SENATE RESOLUTION 41—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON APPROPRIATIONS

Mr. HATFIELD, from the Committee on Appropriations, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 41

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings and making investigations as authorized by paragraph 1 of rule XXVI of the Standing Rules of the Senate, the Committee on Appropriations is authorized from March 1, 1983, through February 28, 1984, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $4,252,400, of which (1) not to exceed $5,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $8,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but no later than February 28, 1984.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SENATE RESOLUTION 42—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON VETERANS' AFFAIRS

Mr. SIMPSON, from the Committee on Veterans' Affairs, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 42

Resolved, That, in carrying out its powers, duties and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs is authorized from March 1, 1983, through February 28, 1984, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the Committee under this resolution shall not exceed eight hundred seventy-two thousand, one hundred fifty-five dollars ($872,155) plus fifteen thousand dollars ($15,000) for special field hearings.

SEC. 3. The Committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 29, 1984.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

NOTICES OF HEARINGS

COMMITTEE ON THE BUDGET

Mr. DOMENICI. Mr. President, the Senate Committee on the Budget will hold hearings on the President's fiscal year 1984 budget submissions on February 2, at 10 a.m. and 2 p.m. in room 608 of the Senate Dirksen Office Building.

David Stockman, Director of the Office of Management and Budget will testify at the 10 a.m. hearing.

The 2 p.m. hearing will consist of 2 panels. The witnesses for panel 1 at 2 p.m. are: Peter Peterson, chairman and chief executive officer, Lehman Bros. Kuhn Loeb, Inc.; Douglas Dillon, chairman, U.S. and Foreign Security Corp.; and Henry Fowler, chairman, Goldman Sachs. The witnesses for panel 2 at 3:30 are : John M. Albertine, president, American Business Conference; Paul R. Huard, vice president for taxation and fiscal policy, National Association of Manufacturers; and James D. "Mike" McKevitt, director of Federal legislation, National Federation of Independent Businesses.

COMMITTEE ON SMALL BUSINESS

Mr. WEICKER. Mr. President, I would like to announce that the Senate Small Business Committee has canceled its oversight hearing on the Small Business Administration's SBIC programs, scheduled for February 3, 1983, at 9:30 a.m. in room 428A of the Russell Senate Office Building.

Mr. President, I would like to announce that the Senate Small Business Committee has rescheduled its January 21, 1983 oversight hearing on the Small Business Development Center program for February 8, 1983, beginning at 1:30 p.m., in the fifth

floor, IRS conference room, Federal Building, 275 Peachtree Street NE., Atlanta, Ga.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, February 2, at 10 a.m., to hold a hearing to consider the Presidential certification on progress in El Salvador.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. BAKER. Mr. President, I ask unanimous consent that the Armed Services Committee be authorized to meet during the session of the Senate on Tuesday, February 1, to hold a hearing on a posture statement to be given by Secertary Weinberger and General Vessey.

The PRESIDING OFFICER. Without objections, it is so ordered.

SUBCOMMITTEE ON SECURITY AND TERRORISM

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Security and Terrorism of the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, February 2, 1983, in order to receive testimony concerning oversight of the Federal Bureau of Investigation.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. BAKER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, February 2, 1983, at 10:30 a.m., to receive a briefing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

EMERGENCY FARM STABILIZATION ACT OF 1983

● Mr. SASSER. Mr. President, on January 26, I, along with Senator INOUYE introduced S. 99, the Emergency Farm Stabilization Act of 1983. A section of this important measure calls for a 2-year moratorium on foreclosures of Farmers Home Administration loans.

This particular provision is in part an effort to alleviate the fear of many American farmers that their farm will be the next on the auction block. Recent articles in the New York Times and Newsweek Magazine underscore the pervasive nature of this concern. As pointed out in the Newsweek piece, foreclosure "seems a clear and present danger to growing numbers of Americans today." Indeed, a Harris poll cited in the article showed that fully 66 percent of those questioned feared losing their homes or farms within a year for failing to meet their mortgage payments.

These men and women need some assurance that their elected representatives have not forgotten them during this troubling time. Such is the spirit of S. 99. This bill tells the American farmer that we are working on the problems plaguing the farming industry.

Mr. President, I think my colleagues would benefit greatly from reading the articles I have mentioned. Once they do I am sure they will realize the need for prompt action on S. 99. I ask that the New York Times and Newsweek articles dealing with farm foreclosures be printed in the RECORD.

The articles follow:

[From the New York Times, Jan. 16, 1983]

IN FARM BELT, FEAR OF FORECLOSURES RISES

(By William E. Schmidt)

JAMESTOWN, N. DAK., January 13.—All across the farm states, there is mounting alarm that the depressed state of the country's agricultural economy is going to reap a grim harvest of failures and foreclosures this year.

As a result, farmers, state officials and legislators speak darkly of mounting anger, frustration and militancy among those who may be forced to sell out farmland that, in some cases, their families homesteaded a century ago.

"I attended two foreclosure sales last fall in my district, and it's really something to watch the people stand there and cry," said Gene Watne, a Democratic state legislator from Velva, in central North Dakota. "I just don't think people are going to stand for this any more. Things are going to get much worse this spring, and I think farmers are going to become more militant."

Bankers here say that loan delinquencies, already triple what they were a year ago, could reach 10 times normal levels. Meanwhile, declining values for farm equipment and land—the collateral against which farmers borrow to get through the harvest season—is going to force many lenders to tighten or deny credit this spring.

Kent Conrad, North Dakota's tax commissioner, estimated that as many as 1,200 of the state's 38,000 farmers went out of business last year and that another 2,500 may not survive 1983, a loss the state will be hard-pressed to afford.

"If there are not farmers out across North Dakota to buy what our small-business people have to sell, we lose many of our small businesses and small towns," Mr. Conrad warned in a speech last month before the North Dakota Farmers Union, the state's largest farm organization. "If you threaten the farmers and main-street businesses of our state, you are threatening North Dakota."

As the nation's most rural state—about 25 percent of its population still lives on farms or ranches—North Dakota has traditionally been a strong bellweather of farm dissatisfaction. In the early part of the century, farmers who blamed Eastern banking interests and the railroads for low prices took refuge in a radical populist movement called the Non-Partisan League, which in 1918 won control of the state Legislature.

Among other things, the league pushed through a reform program in which the state ran and controlled a bank, a grain elevator and a rail line.

Recently, there has been increasing talk among farmers around the state of thwarting forced auctions this spring through what are called penny sales.

This tactic was commonly used in the state in the Depression. Farmers put pressure on buyers to bid small amounts of money, often only pennies, on land or machinery being sold at auction to help pay off another farmer's debts. If successful, the buyers, in turn, leased the land and equipment back to the original owner for a nominal fee. This, in theory, allowed the indebted farmer to at least continue to farm and forced the lender to seek other remedies to recover the money owed.

SITTING ON A KEG OF TNT

"You can only kick people in the teeth so long before they start to kick back," said Jim Brokaw, a farmer who is a Democratic state legislator from Forbes, which is on the border with South Dakota. "We're sitting on a keg of TNT out here."

Earlier this month, in the country's most dramatic instance of rural militance to date, sheriff's deputies in Springfield, Colo., had to use tear gas to break up an angry group of 250 farmers trying to block the court-ordered auction of a nearby wheat and milo farm. The protest, organized by the Colorado-based American Agricultural Movement, failed to stop the auction; three people were arrested and several demonstrators were bloodied in the melee.

In addition, farmers in recent months have turned increasingly to both the courts and to their elected officals in an effort to stall farm foreclosures and ease financial pressures. Legislation proposing an enforced moratorium on farm foreclosures will be introduced in Bismarck, N.D., next week.

Legislators here and in other farm states also plan to introduce minimum price laws for commodities produced in their states. The effort has been described by some as an attempt to rig commodity prices by forging a regional cartel.

Though net income has declined over the last three years among all farmers, those who are most at risk now are small, family operations that incurred large liabilities buying land or machinery in the 1970's and are now unable to repay loans because production costs and interest rates far outstrip their income.

Many of these are young farmers who took advantage of Federal lending programs and now find themselves badly overextended.

As a result, much of the farmers' anger is directed at the Agriculture Department's Farmers Home Administration, which over the years has been the prime lender to small and marginal farmers who had difficulty finding financing elsewhere.

"We see a lot of farmers who feel like they were snookered by the F.H.A.," said Dina Butcher, deputy commissioner of the state Department of Agriculture. "They got into situations in the 1970's when the Federal agencies were offering easy credit and encouraging expansion. Now they feel trapped by the economy."

"They loaned me the money, and helped me put together a financial plan for running the farm," said Mr. McCabe, a 41-year-old dairy farmer from La Moure, who is facing the threat of foreclosure because he failed to meet his annual loan repayment

last year. "Then when you can't pay, they say you're a bad manager, seize your assets and force you to sell out."

Last year, Mr. McCabe and several other financially pressed farmers here formed the Family Farm Foreclosure Legal Assistance Project, an organization that is preparing a lawsuit on behalf of other farmers in the state threatened with failure or foreclosure.

"The irony here is that the F.H.A. was set up, as a lending agency, to help the marginal farmer," said Sarah Vogel, a Bismarck lawyer who is working with Mr. McCabe and other farmers in the state. "Now, they are contributing to the current economic panic."

Miss Vogel and others accuse the Federal agency of arrogance and insensitivity. They say that in order to reduce its nationwide debt load, the agency is trying to force out of business any farmer who falls behind on loan payments.

Officials of the Farmers Home Administration in North Dakota dismiss such charges and say they are, in fact, softening their repayment policies, deferring the principle on real estate loans and no longer requiring that borrowers prove financial progress as a condition of their loan.

TIMES ARE TOUGH TODAY

"Times are tough today, and it doesn't take a big problem to put you in a big hole," said Joe Weimerskirch, an official in the agency's state office in Bismarck. He said that F.H.A. delinquencies statewide are double what they were a year ago and that one in every five of the agency's borrowers in the state is behind in payments.

"If a farmer wants to continue, we'll try to go along with him," said Mr. Weimerskirch. "But if he's losing net worth, maybe the best thing is to sell out."

Bankers and state officials say falling values for both farmland and machinery, which farmers have used for collateral in recent years, will contribute to the worsening farm economy this year.

"We're at the end of the rope on collateral," said J. M. Peterson, vice president of First Northwest Bank of Mandan. According to officials of the Bank of North Dakota, which is owned and operated by the state, land appraised at $300 an acre sold for $140 in a recent auction and a $60,000 four-wheel-drive tractor was traded on the block for $12,000.

"It's got to the point where even good managers are facing real financial problems," said H.L. Thorndahl, president of the state bank.

DISCONTENT AMONG FARMERS

It is a measure of the current discontent among farmers around the nation that President Reagan last week announced a plan to give away surplus grain in Government stockpiles to farmers who agree to idle up to 50 percent of their land this season. By reducing surpluses, the President hopes to bring the price of farm commodities back up.

Despite widespread support from the Farm Belt in 1980, the Reagan Administration and Republicans have become increasingly unpopular in the farm states. Last November, Democrats in North Dakota, traditionally a bastion of Republican strength, more than doubled their number of seats in the state House, and they now control the body for only the second time in the state's history.

An official of the Mental Health Association of North Dakota says the economic pressure on farmers has resulted in a sharp rise in stress-related problems around the state, including child abuse, wife abuse and marital difficulties.

"A lot of people are losing control because they are desperate and don't know what to do," said Myrt Armstrong, the agency's state director, who is coordinating a series of stress-control workshops in farm communities.

[From Newsweek, Jan. 17, 1983]

AGAIN, THE FEAR OF FORECLOSURE

The spectre of the auctioneer stalks throughout the land, haunting debtors in city, town and country. . . . Next to life itself, a home is man's most prized possession. To save it, rugged individualism has grown gregarious, and harried citizens are banding against foreclosure.—Newsweek, Vol. 1, No. 1. Feb. 17, 1933.

It was a far cry from the Great Depression, but as the statistics on home and farm foreclosures soared to their highest levels in years, eerie echoes of 1933 were heard across the nation. In Springfield, Colo., last week, an auction to sell off farm militant Jerry Wright's 320-acre spread turned into a club-swinging, tear-gas-clouded melee between Baca County deputies and about 250 angry farmers who showed up to prevent the sale. The farmers failed, but the incident marked an ugly escalation in the wave of 1930s-style protests that has swept the farm belt in recent months. In Pittsburgh, meanwhile, the Allegheny County sheriff and a local judge imposed their own moratorium on a series of residential foreclosures to keep the jobless from becoming homeless as well. It was only a temporary stay, Sheriff Eugene Coon acknowledged, but he hoped state legislators would soon consider a law restricting foreclosures—like the one he believes Pennsylvania had in the '30s.

Foreclosure seems a clear and present danger to growing numbers of Americans today. According to a recent Harris poll, fully 66 percent of a national sample reported the fear of losing their homes or their farms within a year for failure to meet mortgage payments. Far fewer will actually have to face the problem, government officials and financial experts say, but for those who do it is serious enough. Farm foreclosures by federal land banks, such as the one that wound up buying Jerry Wright's wheat and milo farm last week, rose 240 percent in 1982, involving 1,065 of 667,000 federally guaranteed farm mortgages on the books. And there are plentiful signs that the four-year crisis on American farms is not yet over. A continuing glut in grain and dairy products has depressed farm income nationwide. Despite the recent declines in prevailing interest rates, says Iowa State University economist Robert Wisner, "there are greater financial pressures (on farmers) now than at any time since World War II."

IT'S AWFUL

Residential foreclosures are also the highest they have been since 1952, according to the Washington-based Mortgage Bankers Association of America. The MBA estimated that slightly more than six-tenths of 1 percent of all residential loans were in foreclosure proceedings during the third quarter of 1982. That means the forced sale of about 170,000 homes—and the figures do not include thousands of other families who sold thier homes, under heavy financial pressure, just to avoid foreclosure. With the nation's unemployment rate continuing to set postwar records (10.8 percent in December, it was announced last week), there is little reason to expect improvement in the near future. "I wouldn't doubt that our fourth-quarter [foreclosure] figures will be at least as bad as the third quarter's, and I wouldn't be surprised if the first three months of this year are just as bad," said Mark J. Riedy, executive vice president of the MBA. Predictably, foreclosure was most common in high-unemployment states like Michigan, Ohio, Illinois, Pennsylvania and New York, Riedy said. And given the size of the federal deficit, he added, there is little hope that Congress will pass freshly introduced legislation to provide mortgage assistance for the unemployed. "It's awful," he said. "There's nowhere to turn in this kind of situation."

PENNY AUCTIONS

That sense of desperation boiled over in Colorado last week—but except for its violence, the Springfield incident was little different from a number of other farm-belt demonstrations against foreclosure since the summer. Militants, like those in the American Agriculture Movement, the organization that mounted a series of tractorcade protests against federal farm policies in the late '70s, have consciously imitated prairie populists of the 1930s in staging "penny auctions" to save their farms. When the local bank puts a farm on the block, the farmer's neighbors and family dominate the proceedings and bid only pennies—which the bank must accept or postpone the sale. The friendly purchasers then give the farmer back his property debt-free. "The friends and relatives are hostile to anyone else who tries to buy the farmer's assets—they'll intimidate anyone else not to bid," says Brian Galiardo, an economist with the Federal Reserve Bank in Dallas. "It's very much a strong-arm technique," rooted in a growing "us-or-them mentality" between farmers and their creditors.

Not coincidentally, Jerry Wright is one of the founders of the American Agriculture Movement—and when his farm was scheduled for auction at the Springfield courthouse, his followers rallied from several states around. Although federal officials insisted he has been treated leniently, he sees himself as the victim of failed government policies. Whatever they may think of Wright's tactics, many farmers tend to agree. When a county official appeared on the courthouse steps to announce the sale, Wright's followers were ready. Chanting "no sale, no sale," they rushed the door, and two dozen sheriff's deputies counterattacked with clubs and tear gas. The crowd fell back and rushed the door again; again, it was repulsed.

At least one person was injured and three farmers were arrested for assaulting police officers: one escaped, in handcuffs, to tell reporters he had only come to bid on Wright's farm. Instead, it was sold—for a rock-bottom $96,136—to the Federal Land Bank Association, which held the mortgage. Wright declared his intention to resist eviction to the end. "We're going to have to stop all foreclosures," Wright said, "If people don't stand up to uphold their rights . . . we'll have a two-class system."

For frightened homeowners in the Pittsburgh area the threat of eviction seemed to recede last week when Sheriff Coon and County Judge Nicholas P. Papadakos put their freeze on foreclosures. "I had a lot of nightmares," recalled Mrs. Marie Richards. "I could see the sheriff at the door." Coon made the first move by dropping 43 owner-occupied homes from a list of scheduled

foreclosure auctions. Judge Papadakos, who had already discussed the strategem with the sheriff, announced his "temporary judicial moratorium" two days later. Of the 43 homes, Coon said, about half were owned by persons who had lost their jobs, another third by self-employed persons whose income had been reduced by the recession, and the rest by those who fell behind in their payments because of illness or injury. "We're not going to help deadbeats," Papadakos insisted. His goal, he said, was to persuade banks and other lenders to allow delinquent debtors a chance to reschedule their payments or refinance their homes.

LESSONS

Despite grumbling from some lenders, most banks appeared ready to go along with the moratorium. And homeowner Richards said she was "overwhelmed" by the reaction. "It does look as though people across the country are looking to Pittsburgh as a model" of emergency relief. If nothing else, it was clear that many Americans were relearning firsthand the painful lessons of an earlier generation's distress.●

AMERICA'S FIRST DEFENSE PRIORITY

● Mr. GOLDWATER. Mr. President, in the Armed Forces Journal of February 1983 is an excellent editioral by Mr. Benjamin Schemmer relative to the need for this administration to develop strategic plans and even tactical plans. We have not done this in so many years, it is hard to remember when an administration developed a basic military plan on which we could build our armaments, manpower, and so forth.

I ask that this article be printed in the RECORD.

The article follows:

EDITORIAL:—AMERICA'S FIRST DEFENSE PRIORITY: IMPROVING THE "TALK-TO-ACTION" RATIO

(By Benjamin F. Schemmer)

A painful, prolonged annual ritual is underway again in which Congress and the Administration try to reach some consensus on how to defend America. Like last year, when Congress failed to agree on a Fiscal Year 1983 Defense Appropriations Bill—notwithstanding interminable hearings and a mind-numbing, down-to-the-wire lame duck session—it is unlikely that any clear vision or road map will emerge this year of how American can defend itself most efficiently, much less of how much money should be invested to do so.

Yet surely our citizens have some right to expect that, as a minimum, of their legislators and leaders in the Executive Branch. Right up front, the 21st-25th words of the Preamble to our Constitution, after all, charge them to "provide for the common defense . . . for the United States of America."

Neither have done so. Congress and the Administration have sidetracked themselves by a never-ending defense debate (the "annual appropriations auction") over programmatic issues: How to deploy M-X missiles, and should we? Should we buy more C-5 transports, 747s, or C-17s to improve our airlift? Is the F-18 worth its cost? Should the Navy have two new carrier battle groups, or just one? Should both the B-1 and Stealth bomber be built? How fast should we launch new LSD-41s to rebuild the Marine Corps' amphibious assault punch?

Those are important questions, to be sure. But they are not the fundamental issues which our legislators and leaders should be addressing: American needs to decide first how to defend itself in the face of acute, long-term economic problems that are not about to go away. Debates over one vs. two nuclear carriers and big vs. little carriers may generate good newspaper copy or make for good campaign speeches, but they don't make good defense policy or national strategy.

What will make good strategy is deciding one tough question first. The President can't decide; Congress can't decide: They have to decide together: How much of our Gross National Product should we spend for the common defense on a long-term, steady basis?

Can we afford only 5 percent (as in the early Carter years), or 7 percent (as the Reagan defense build-up calls for by 1987, a number that would support current active duty force levels without further depreciation in their equipment), or 9 percent (the number needed to increase present face levels by about 20 percent and double our capability, from 60 to 120 days, to fight an intense conventional war)? Or can we afford only 4 percent, which is more than our NATO allies collectively devote to their own defense (Japan, less than 1 percent)?

If Congress would help the Executive Branch illuminate that choice for the American taxpayer and vote on that question, then America could rebuild its defenses, however the numbers come out, with some constancy of purpose and the steady course needed for efficiency in any enterprise. Civilian and military leaders in the Pentagon would be far better able to face up to the hard choices and trade-offs that have to be made.

There are some excellent examples of such trade-offs in a draft report by the International Public Policy Foundation now circulating within the Administration and Congress. A long-term "social tilt" in the Federal budget instead of a "defense tilt"—for instance 10 percent of GNP for social and health programs and 6 percent of GNP for defense—might require DoD to transfer 25 percent to 30 percent of its active forces to the reserves. That could save roughly 1 percent of GNP while allowing current rates of equipment modernization to continue, since there would be a substantial shift in funding away from day-to-day operations and manning cost toward a more robust modernization program. (The alternative is not without its readiness and social costs. The smaller US rotation base available for our overseas active forces might require lengthening overseas tours to four and a half or five years instead of the present three year average.) Another consequence of such a "social tilt" would "require our Allies to accept their share of the defense burden": it now costs the US about 2 percent of GNP to make up for their social tilts.

Those are the sorts of issues Congress should be debating instead of whether DoD decided correctly to buy C-5s instead of 747s or C-17s. And those kinds of policy issues will flow naturally out of a basic decision on the continuing level at which American GNP will be invested in the nation's defense.

Instead of addressing that central issue, Congress last year demonstrated once again its gut instinct to "go for the capillaries." That's how former Navy Under Secretary R. James Woolsey often described the work of OSD's system analysis who toyed interminably with program alternatives "at the margin"—distracting senior military leaders who needed the time instead to put together some better war plans. The description now fits Congress.

Between February 8th and September 30th last year (when Congress by law should have passed a Fiscal Year 1983 Defense Appropriations Bill), Congress held an incredible 407 separate hearings on the defense budget; 1,258 DoD personnel trekked to Capitol Hill to testify at those hearings; their printed record spans a 4-ft. shelf in our office bent from the weight of 38 hearing volumes and reports (and not all of the hearings, which continued for another three months, have been printed yet). That's a lot of talk for very little action. The Pentagon never did get an FY83 defense budget: instead, it got an unprecedented second continuing resolution that has become a de facto substitute for an appropriations bill, but which "resolves" very little. (Sadly, Congress will now tackle DoD's FY84 budget by regurgitating virtually the same sets of questions it debated at such length last year).

The nation needs to improve its "talk-to-action" ratio on national security matters. (Air Force Lt. Gen. Kelly Burke used to use that phrase to describe issues he delegated to his deputies when it became obvious they would entail interminable but unproductive meetings.) Debating programmatic issues and defense budgets at the margin is not going to fix the economy, nor will it deter the Soviet Union. Congress and the Administration need first to fix some institutional problems:

1. Reform the Joint Chiefs of Staff system along the lines which two serving members of the JCS urged publicly last spring. The President needs crisper military advice than he is getting, not the compromised product that results from the military's annual intramural scramble for resources, as then JCS Chairman General David Jones described the problem last year. The nation needs better war plans than the JCS system can now formulate because so much of their time is drained on parochial, inter-Service turf fights or in unproductive meetings of the Defense Resources Board (whose work proves largely irrelevant because of last minute White House changes in the Federal budget bogies).

2. Reform the Congressional defense budget process, as Senator Barry Goldwater urged the Majority Leader in December. Too many Congressional committees (six of them now) are micro-managing too many details of the defense program; their authority overlaps too much; they produce more confusion than direction; and too many Members are using their power to protect their constituencies instead of the nation. (Cleaning up Congress' act instead of the Pentagon's might be a more logical goal of the Congressional Reform Caucus which won so much publicity but produced so little consensus last year.)

3. Reform the Defense Department's civilian hierarchy. Too many decisions are being made by civilian transients who fail even to consult the JCS. Pivotal war plans are too often pigeon-holed for further study by the OSD civilian staff, without even telling the JCS what their misgivings might be. The JCS system doesn't work, so the OSD staff bypasses it instead of helping the Chiefs

overhaul it. Dr. Fred Ikle, the Under Secretary of Defense for Policy, recently wrote AFJ's Congressional Editor about her reports on JCS reform: "Except for some internal, private conversations, that subject has taken a back seat to the battle for the budget." That was also last year's excuse; it will likely be next year's excuse. If JCS reform were put in the front seat, the annual battle for the budget would be far less brutal.

In a press conference last March, Army Chief of Staff General E.C. Meyer "guesstimated" that the Defense Department could increase its efficiency "more than 15 percent" simply by overhauling the JCS system. Fifteen percent of a $250-billion defense budget is $37½-billion—the very kind of increase President Reagan is fighting for.

Meyer pointed out that "15 percent [more] efficiency does not mean 15 percent less dollars." But without basic institutional reforms to the way Congress and the Administration decide how to defend America, even an added $37½-billion won't buy the security we need.●

ALBUQUERQUE SCHOOL NUTRITION PROJECT

● Mr. DOMENICI. Mr. President, recently an article appeared in the Albuquerque Journal regarding the state of the school lunch program in our Albuquerque school system. I was extremely encouraged regarding the steps school officials, students, and parents are taking to insure that their school lunch program provides the highest degree of nutrition possible.

What is extremely interesting is the fact that these changes are being done at the local level rather than having us here in Congress or some other Government policymakers direct these decisions. It would seem to me that the article describes perfectly the capability local citizens have in making sure programs fit the needs of the people.

The article was written by Susan Landon and appeared in the Albuquerque Journal on January 21, 1983, and was entitled "School Nutrition Project to Expand." I submit for the RECORD this article.

The article follows:

SCHOOL NUTRITION PROJECT TO EXPAND

(By Susan Landon)

School cooks will be keeping the lid on canned peas and children will be saying goodbye to gravy in many of Albuquerque's public elementary schools in the next few days.

Lunch trays that were once filled with turkey and gravy, canned peaches and instant mashed potatoes will instead feature plain turkey, baked potatoes, fresh fruit and whole-wheat rolls.

The Nutrition Action Project, which began this fall at Longfellow Elementary School, will be expanded Jan. 31 to most elementary schools in the south area of Albuquerque.

"We're trying to control the amount of salt, fat and sugar in the meals, and increase the amount of whole grains, fresh fruits and vegetables," said Elaine Adkins, cafeteria services director for the Albuquerque Public Schools.

The nutrition project, which may eventually spread to all elementary schools in the district, is the direct result of an effort by the parent of a Longfellow elementary student and the support of the school's principal.

Marilyn Mattson, who often ate lunch with her son last year at Longfellow Elementary School, said she was appalled by what she saw on his cafeteria tray.

"I thought, 'This is 1982, but this lunch doesn't look like it has improved much since when I was in school in the 1950's,'" she said.

"A nutrition revolution was going on around the country, but the school meals here were inconsistent with the concerns of the public."

Mrs. Mattson, who is assistant to the director of the nonprofit Center for Community Education Development, wrote an article in the center's newsletter, asking for parents to start a grassroots coalition to improve school meals.

She received only one response—a phone call from Elaine Adkins.

With Ms. Adkins' support, Mrs. Mattson researched school nutrition programs, and found a model project in Georgia. Longfellow Principal Vita Saavedra was sympathetic to Mrs. Mattson's concerns, and helped set up a nutrition project that was incorporated into the total school program.

Parents in the Longfellow area who were particularly interested in nutrition were asked to a join a committee, which has been meeting since the summer.

The Longfellow project was a hit with students, who started leaving less food on the plates. Soon, Monte Vista and Eugene Field elementaries joined in the project.

The fresh foods cost the district a little more, but the price is offset by increased numbers of students eating in the cafeteria. Students do not pay more for the meals.

The schools added to the project later this month will do more than simply start serving different foods and expect the children to eat them, Mrs. Adkins said. Instead, parents, teachers and administrators will all be involved in the change.

The importance of good nutrition will be taught in the classroom, and teachers will incorporate the nutrition project into math and science classes. For instance, children will learn to measure foods used in nutritious recipes, such as homemade bread.

The change to fresher foods and less sugar, fat and salt is part of a growing awareness of health in the district and the nation, Ms. Adkins said.

"The school district's physician, Norty Kalishman, stresses the importance of 'wellness' as a life skill. People are now learning how to be responsible for their own health," Ms. Adkins said.

"Health should be an integrated part of learning. We can learn math, English and reading, but if we don't take care of our own health, we won't be very successful in other areas."

It has also been shown that children's diets influence their performance in school, she noted.

To make the switch, the school district is taking existing menus and altering them. The change is a trial-and-error attempt to find out what the children like.

For instance, Mrs. Mattson said, children turned thumbsdown on pita bread stuffed with tuna. Also, some children don't immediately take to whole wheat breads and rolls. Cafeteria workers may use flour that is 60 percent whole wheat and 40 percent white.

The cafeterias also try to replace canned vegetables with fresh produce, because the canned products generally have more sodium, Mrs. Mattson said. Studies have shown high salt intake is linked to high blood pressure and other diseases, she noted. Other studies have shown a relationship between consumption of large amounts of fatty foods and cancer.

Ms. Adkins noted that the U.S. government has published dietary guidelines that call for less fat, and sugar in the diet.●

VYACHESLAV CHORNOVIL, JOURNALIST AND DISSIDENT

● Mr. DOLE. Mr. President, I was recently pleased to receive a message from the Committee To Protect Journalists. A nonprofit organization dedicated to the support of colleagues around the world who have been imprisoned or otherwise forcibly prevented from practicing their profession.

The issue of freedom of the press is one that has been, and should be, raised in virtually every corner of the world, regardless of the political system under which the journalists conduct their vital work. I welcome the efforts of the committee to protect journalists, wherever it seeks to promote genuine freedom of the press, wherever journalists may suffer repression for reporting what they believe to be the truth.

With this in mind, I would like to enter into the CONGRESSIONAL RECORD an article from the September 1982 issue of the CPJ Update, the newsletter of the Committee To Protect Journalists. The article describes the tragic fate of Ukrainian journalist and imprisoned Helsinki monitor, Vyacheslav Chornovil, who has spent most of his last 15 years in the Soviet gulag of labor camps and Siberian exile. Although Mr. Chornovil has been imprisoned on a variety of unsubstantiated charges, his real crime, as the following article points out, was to protest the injustices he witnessed as a journalist within the Soviet system.

At this time, I submit the article for the RECORD:

The article follows:

DISSIDENTS CHARGED AS CRIMINALS

Ukrainian Journalist Vyacheslav Chornovil has spent most of the last 15 years in Soviet labor camps and remote, icy places of internal exile. That period has spanned three different sentences. The most recent one, five years in labor camps for "attempted rape," was handed down in June 1980, just a few months before Chornovil's second term was complete.

As Nadia Svitlychna, Chornovil's former editor who is now living in the U.S., explains, the false charge against him reflects a new KGB tactic directed against dissidents who have almost completed their sentences. Guns and drugs are planted on political prisoners, or they are "set up," as in Chornovil's case, and are then resentenced on criminal charges and jailed with common criminals, rather than with other political prisoners. The purpose is twofold: to intimidate dissenters into submission, and to dis-

credit the dissident movement abroad. The tactic also serves to isolate dissidents from colleagues who could provide moral support during the long, painful years of imprisonment.

Chornovil was first arrested in August 1967 and sentenced to three years in a labor camp for spreading "anti-Soviet propaganda," which, after treason, is the second most serious charge in the Soviet Union. Chornovil's crime had been to write about KGB trials of Ukrainian intellectuals. His report was published as *The Chornovil Papers* in the U.S. by McGraw-Hill in 1968. The work earned chornovil the 1975 Nicholas Tomalin prize for investigative reporting from *The Sunday Times* of London.

Released in February 1969 as part of an amnesty, Chornovil resumed publishing in Ukrainian samvydav (samizdat) publications articles critical of Soviet repression. He was arrested for the second time in January 1972 and sentenced to six years in a strict-regime labor camp and three years of internal exile. While in the labor camps he staged several hunger strikes and continued to write about his treatment. In 1975, he renounced his Soviet citizenship in a letter to N. V. Podgorny (then President of the Soviet Union) and applied to emigrate to Canada. He wrote that "there is no guarantee that after the completion of my long term . . . the KGB will not fabricate yet another 'case' and throw me behind barbed wire for the third time." In October 1979, while serving his term of internal exile in the Siberian Arctic (where, he wrote, temperatures drop to 71° below zero), Chornovil joined the Ukrainian Helsinki group to monitor Soviet compliance with the Helsinki accords. The allegation of attempted rape came six months later.

Chornovil's spirit has not been broken by his prolonged ordeal. According to *The Sunday Times* of London, he is so active in organizing prisoners that he has earned the nickname "The General." In February 1982, *The Sunday Times* published a translation of Chornovil's account of a hunger strike declared in June 1980 to protest the attempted rape charges. It first appeared in Ukrainian samvydav, and was later smuggled out of the USSR. About the allegations against him, Chornovil wrote: "I was deprived of all rights to legal defence. In order to shut me up I was, by order of the KGB, denied access to all materials relating to the clumsily fabricated criminal case that was brought against me: even the text of the sentence." On his hunger strike: "On the fifth day, I was told that I was to be punished by a ten-day confinement in the prison cells because I had refused to work." By his account, he was forcibly taken to an isolation cell, stripped and thrown into a cell with bare boards and no bedding. A doctor who had never examined him issued a statement permitting Chornovil's confinement. On the thirteenth day of the fast, an orderly took his blood pressure and gave him some bedding. Faced with compulsory force-feeding, Chornovil abandoned his fast on the twentieth day: "I was forced to eat the sticky bread and water-soup . . . the prison doctor had prescribed . . . with the obvious intention of undermining my health." Chornovil envies I.R.A. hunger striker Bobby Sands his martyr's death. A person who dies from self-inflicted starvation in the USSR, he writes, can never expect thousands of demonstrators at his or her funeral. "Instead," he adds, "funeral rites would have been sadly paid to him by a few prisoners on grave-digging duty, lighting up a cigarette over his grave, marked only by a number. That is precisely the fate that awaits me. . . . One cannot help but be jealous of suicide victims when one lives in a society in which, among other human rights, one is deprived also of the right to determine the course of one's own life."

As Chornovil approaches 45 (his birthday is December 24), his physical health is rapidly deteriorating. A Ukrainian-American newspaper recently reported that he suffers from colitis, hypertension and a shoulder joint inflammation. Earlier reports indicated that he also has arthritis and chronic inflammation of the pharynx.

Chornovil was recently transferred from the labor camp in Yakutsk ASSR to a re-education center in Kiev, the Ukrainian capital and his home city. Such a move is usually an attempt to further torment a prisoner with the close proximity of family and friends. Chornovil's wife Atena Pashko Chornovil lives in Kiev, but restrictions on visiting imprisoned dissidents are so severe that spouses are often unable to see each other for years at a time. KGB agents have been known to pressure a spouse's employer into forcing the dissident's wife or husband to work overtime on the annual scheduled visiting day. According to recent reports, Chornovil's wife was allowed to see him for half an hour at the Yakutsk labor camp in April.●

THE TACTICAL AIR COMMAND

● Mr. GOLDWATER. Mr. President, in the January issue of Armed Forces Journal, an interview was printed with Gen. Wilbur L. Creech, the Commander of the U.S. Air Force Tactical Air Command. For those among you who are unfamiliar with some of these Air Force units, Tactical Air Command is the fighter command of the Air Force.

While we have heard a great deal recently about a revitalization of our strategic deterrent forces, it should be kept in mind that the Tactical Air Command with conventional weapons will be at the forefront of almost any conflict in which the United States might be involved. In fact, if anything is likely, it is that we would be involved in conventional conflict rather than nuclear war. General Creech has made some very pertinent comments on the status of the Tactical Air Command to the editors of the Armed Forces Journal, and I strongly urge my colleagues to read his remarks and study his comments on the various aspects of our fighter forces.

Mr. President, I ask that the article entitled, "AFJ Interview with Gen. Wilbur Creech," in the 1983 issue of Armed Forces Journal International be printed in the RECORD following my remarks.

The article follows:

[From the Armed Forces Journal International, January 1983]

AN EXCLUSIVE AFJ INTERVIEW WITH GEN. WILBUR L. CREECH, COMMANDER, USAF TACTICAL AIR COMMAND

(By Deborah G. Meyer and Benjamin F. Schemmer)

AFJ. Why do USAF's Tactical Air Forces need to buy five additional TAC fighter wings over the next five years or so, when USAFE doesn't have half the collocated operating bases (COBs) it needs to bed down half of the assets you already have standing by to reinforce Europe? In other words, where would you put the extra planes in Europe, and are five additional TAC fighter wings the right priority—when some responsible people suggest that TAC doesn't own the modern munitions it needs to conduct an air war anywhere around the world? General Franz-Joseph Schulze said in Köln in October that we're still buying "Sixteenth Century bombs."

General CREECH. On your first point: we have the COBs we need. I'm not sure where you got the impression that we don't have the COBs. We've made great progress in the COB program. Every single one of the 87 squadrons that I can send over there is bedded down—and they are viable beddown plans. The only problem we've been having in the COB program is getting the initial money for minimum essential facilities from Congress.

AFJ. That's really what we meant. What good is it to deploy some 80 squadrons on soft airfields—no munitions, no shelters, no protective fuel storage? That just gives the Soviets a target-rich environment, doesn't it?

General CREECH. No, not at all. Obviously, as you deploy your force, you run into the mass vs. survivability equation. But he has the same equation. NATO has as many hardened shelters as the Warsaw Pact does. As he brings aircraft forward, he has to put them in the open—or in open-topped revetments—and all are vulnerable to attack by our fighters with CBUs [cluster bomb units].

We have the same problem. But a lot of our bases are much, much farther back than are his, so the fact that ours are in the open is of lesser consequence, but it is still not inconsequential. On balance though, you need those forces there to fight the war with, and you hope to get money for more shelters.

AFJ. The Air Force apparently hopes to buy munitions at a rate of about $5 billion a year starting in 1987 or 1988, compared to less than a billion dollars last year. Doesn't that suggest that you are still planning to spend a lot more money on new airplanes—additional force structure—than on modern munitions? Is that really changing?

General CREECH. No, it isn't. As a matter of fact, if you track the numbers there's been a dramatic decline recently in the number of fighters that we're buying. I don't have all those numbers at my fingertips or the exact change in the ratio; but I can tell you intuitively that I think our budget is weighted more in favor of munitions than airplanes than before because of the very few numbers of fighters we're buying. In the FY 83 budget we're down to buying only 159 fighters, and 39 of those go to continental air defense—and that only leaves 120 fighters to sustain 35 tactical wings. That won't even sustain that force, much less build it.

AFJ. What do you need?

General CREECH. The formula is 6.5 new aircraft per year times the number of wings. Therefore, for example, you would need 260 fighters a year to sustain a 40-wing force and about 228 for 35 wings. That's to cover all kinds of attrition—accidents and aging into the boneyard. So we're buying about half as many fighers as we need.

AFJ. Where do you hope to be in procurement by '87 or '88?

General CREECH. In the high 200s. Unless we go to the high 200s, we will never reach a 40-wing force.

AFJ. Why is it that next year Germany will have its MW-1 dispenser and submunitions available while we haven't one such system ready?

General CREECH. I think that depends on how you look at it. If you break down what the MW-1 system dispenses and look at what we have, we've had for years the kinds of munitions they're just now putting in the field. For example, one of the munitions that that they have in the MW-1 system is very much like Rockeye.

They also have a bomblet that's supposed to be good against runways—STABO. We've tested that, as we have all of the runway-defeat munitions, and we are not persuaded that's the way to go.

AFJ. You had one test of STABO at Eglin Air Force Base recently and it flunked, for a variety of reasons—different temperature and humidity conditions caused the fusing seals to deteriorate after they sat for weeks in the open, things like that. Last month AFSC's Armaments Division recommended, "Forget STABO: let's just work on our own BKEP (boosted kinetic energy penetrator)." But the Germans say they've fixed STABO for our test environment and want us to retest it. They make the point, "If your Air Force is going to reject STABO after one test failure, why should we accept Pershing II missiles, which flunked their first four tests?"

General CREECH. We're not! If it came out that way I didn't intend it. There's still an open mind about STABO. To discuss that for a moment, we've tested all these runway-defeat munitions over the years—BAP-100, Durandal, etc. We were directed to go into the JP-233 program [with the British] by OSD. And the Air Force supported that. But, as you know, that turned out to be an abortive attempt—Congress later canceled the program. So we lost some years. The question then became: where do we go from here? For the interim, we're buying the Durandal, which we tested, and with certain fixes we can make it sufficiently reliable and cost effecitve. Where we go post-Durandal is a very open subject. I talked to [AFSC Commander] General Tom Marsh as late as yesterday, and no decisions have been made. The last thing anyone has done is close the door on STABO. The competition on where we go after Durandal is wide open.

Getting back to your original question, the Germans have a personnel mine not ulike Gator, which we are putting into quantity production. So if you really look at the STABO/MW-1 system carefully, we have a family of the same kinds of munitions, some of which have been in the U.S. Air Force for a long, long time. I don't say this critically, but the Luftwaffe is just getting into the CBU business, after all these years. So it would be very ironic to twist that around and say we're behind them.

AFJ. New airfield denial concepts, such as Counter Air 90, propose the use of conventional ballistic missiles like Axe or BOSS or CAM-40 or even the "Incredible Hulk." How can you assure the Soviet Union that one of those flying off German soil isn't a nuclear weapon? Is it politically feasible to even remotely consider using a conventional ballistic missile for airfield attack?

General CREECH. The fact that it has a so-called "nuclear signature" is one of the factors to be taken into account before any decision is made to buy such a system. There's no question that is a factor one has to take into account. I cannot assure you there is a way around that.

AFJ. Should we be spending money on a large payload airfield denial weapon?

General CREECH. We're looking at that—and it has some interesting potential. First of all, it's a very exciting prospect to be able to push a button and close maybe 55 Warsaw Pact main operating bases. Sounds good, and it would be good. Such a system, though, has some real challenges to overcome; it's not a simple equation. For example, it has to be an extremely accurate system and that sometimes is overlooked. On your typical NATO air base of COB—or your typical Pact air base or DOB [dispersed operating base]—with today's modern fighters you can take off and land on a half of a half of the runway, and that gives you four take-off and landing surfaces. The taxi-way is usually a bit narrower, but that gives you two more by splitting it in half. So that totals to six take-off and landing surfaces. If you close five-sixths of them, it's interesting—but almost irrelevant.

Therefore, you have to be able to hit something that is only 75 ft. wide and 3,500 to 4,000 ft. long—and you have to get the crater in the right place at that.

Moreover, the other side can up the price of poker by building another runway alongside. No new technology is required, and it doesn't cost a great deal. So then you no longer have six available runway surfaces, you have 10. And if you close down nine-tenths, that's not enough. So if you're talking 200-300 ft. CEPs, that's not in the ballpark. It's not enough to hit somewhere on that runway; you have to exquisitely close that last final segment.

AFJ. What is Creech's solution?

General CREECH. First of all, Creech is as strong a champion as anyone else to examine solutions to close runways. And I'm interested in all these innovative approaches that are being examined. If they can meet the accuracy requirements and are mission and cost effective, then I'm very interested.

My primary approach to airfield attack is to go after the unsheltered aircraft. The Pact doesn't have all that many shelters, and while I can't give you the exact number that will be unsheltered in wartime, I can tell you that for every Pact airplane in a hardened shelter there will be at least two and probably three in the open. And we can destroy aircraft in the open in multiples with cluster-type munitions. The Warsaw pact also has a large inventory of attack helicopters, which they must keep generally lumped together for logistics reasons—they can't put one every five nautical miles. And we can track those helicopters back to where they roost at night, with AWACS and other means, and then take them out in multiples as well. Therefore, a key part of my solution is to go against their aircraft in the open with manned aircraft. If we can also bottle up their MOBs for useful periods by mass attack of runways, then fine—let's do it.

AFJ. What about the proposal in Counter Air 90 to put AMRAAMs in MILVAN containers, then fire them barragelike into the air to take care of the enemy fighters that are between Hawk and Patriot coverage and SHORADS, while F-15s and F-106s take on the guys above 15,000 ft.?

General CREECH. I hadn't heard of that one before. Sounds like it deserves a very thorough examination!

AFJ. What would you consider the top three areas of concern with TAC's command, control, and communications?

General CREECH. Let me talk communications, because that's the lifeline of command and control. The top three? Well, first of all, present-day communications are easily disrupted; therefore, we need more and better antijam communications. Secondly, with regard to surface communications, especially in a European context, we have insufficient capacity.

AFJ. Why don't we just give evey colonel in USAFE two or three bucks' worth of 10 pfennig pieces and let them use the Germnan Grundnet?

General CREECH. The Grundnet is going to be used to the extent it can be. Which brings me to my third point, which is physical survivability. Almost all of our comm is now above ground, soft, and very vulnerable to physical attack.

AFJ. How about in a nuclear exchange?

General CREECH. In terms of an all-out nuclear exchange in Europe, we think the communications are adequate. It's in sustained conventional war—large scale, dynamic—that our general C^3 inadequacies are most relevant. Now, we're doing lots of things to solve those problems, including improvements in the physical survivability of the comm in Europe and elsewhere. We've also gone more to satellite communications; however, they have survivability issues to contend with as well. We also have a major effort going forward in AJ communications.

AFJ. Where does IFF (Identification Friend or Foe) fall on your list of top concerns?

General CREECH. IFF is terribly important. We've really never had an IFF system; we have always had an IFU system. We identify friends from unknowns, but we do not have enough certainty about the unknown to declare him an enemy. To we've never solved the foe part of the equation. Before we can ever fire solely on the basis of the IFF we'll first of all have to get our reliability up—otherwise the fratricide is quite high. We solve this problem today through IFF and procedures.

What our inadequacies in IFF do to us today is not so much constrain our shooters as constrain our other aircraft that are going about other tasks that have to follow all of these circumscribed procedures to keep from getting shot down. Therefore if we can solve the IFF problem and get the system reliability high enough to actually fire against that unknown, it would greatly increase the operational flexibility, for example, of our air-to-surface airplanes.

AFJ. A lot of the trade press talks about the competition between the F-16XL and the F-15E. When would TAC be ready to recommend a decision? Or are you going forward with both?

GENERAL CREECH. No, we are not going to go forward with both, as far as I know. First of all you have to understand what the E-model is. It's a product improvement concept—for a possible buy of 400 airplanes—for the long-range battlefield interdiction mission, including at night. All that was proposed was to missionize the rear cockpit and

add LANTIRN [Low Altitude Navigation and Targeting Infrared system for Night]. That's all it was. Then General Dynamics stepped forward with the F-16XL—and they deserve a great deal of credit for developing it with their own venture capital—and they said, hey, we believe we can compete in that ballgame, so let us compete the XL. We said fine, because one always welcomes competition. It turns out that the XL, while being more costly on the front end because of the development costs involved, has certain later costs advantages because it's a smaller airplane with a single engine. It is, at least on paper, competitive.

So we're having what is called a comparative evaluation. There is a schedule laid out by Systems Command that should culminate in an early 1984 decision or thereabouts. We intend then to product improve that fighter for that role, and only a certain number.

AFJ. Going back to LANTIRN for a moment, Dr. DeLauer (Under Secretary for Research and Development) recently told the House Armed Services R&D Subcommittee that for the $6-million or so it will cost per aircraft for LANTIRN, you'll be able to decrease the number of TAC fighter wings you'll need. Do you agree with that theory?

General CREECH. LANTIRN gives you powerful leverage because you can fly more sorties in a given day with the same airplanes. So, yes, there is a trade-off in force structure capabilities. We need to get into night for a whole range of reasons. As I mentioned, one of those reasons is that it increases our ability to fly more sorties and deliver more firepower. However, in Europe in January, with the combination of poor weather and night you only have about a four-and-a-half-hour day on the average. It doesn't matter how many sorties you can fly, you are able to fly only two during that short time frame. But if you can open up night, and go in under the weather, you can expand that operating envelope to 14 hours a day. That's a fantistic jump. It's still not as good as 24 hours, but it's a major improvement. And when you take other seasons in Europe and other locations like RDF country, then you can get up to 22 hours or more a day. The technology is here; there's no doubt. And it's time to get on with it.

AFJ. How high are those 700 pods on TAC's priority list compared to the first extra TAC fighter-bomber wing?

General CREECH. They're higher.

AFJ. Where are Assault Breaker, the Conventional Standoff Weapon, and Pave Mover on your priority list?

General CREECH. High, because we want to do anything we can to support the Army.

AFJ. Is it in the top half?

General CREECH. Oh, yes, very high. After all, the Air Force was the one that came up with the Pave Mover radar that makes the whole concept take form in the first place. Now it has taken on the new J/STARS coloration as a joint program designed to realize some economies of scale in the radar and perhaps even in the missile. The Air Force is supporting that entire effort.

AFJ. In one of the recent FY84 budget issue papers it was suggested by the OSD staff that instead of the Army hanging Pave Mover on the JVX, it should be hung on TR-1s, and that the Army should also buy and operate some TR-1s. Does it make sense to have two Services flying virtually identical systems, when all they really need is the information?

General CREECH. That's a good question.

AFJ. Is there a good answer?

General CREECH. It's not my proposal.

AFJ. Do the four new Soviet tactical aircraft that you mentioned recently show much of a step forward in quality?

General CREECH. Yes, they do represent another important step forward in qualitative terms. It's the same technological phenomenon at work in our own society—the better they get, the faster they move. For example, they now have look-down and shoot-down capability and the similar modern tricks of air warfare. They're generally about a half decade behind us, but when they get there, they're about as good as we are. And they build very reliable equipment.

AFJ. With respect to your Advanced Technology Fighter and Europe's Agile Combat Aircraft plans, is now the time to try and build a truly common NATO fighter?

General CREECH. I think we need to get together to talk about it. You know all of the variables—the Europeans have a propensity to form Europe-based consortiums because they want to keep their aerospace industries alive. Also, sometimes they express the fear that a US-proposed "common solution" really means a US-built solution which they would buy. These roadblocks are not inconsequential. But I think we have to get together.

After spending nine years of my professional life in Europe, including a period of time at a reasonably high level, it's my observation that NATO coalition equipment babies are rarely born. On the other hand, NATO will and does adopt reasonably well-grown children. The NATO AWACS is a good case in point.

We went ahead with AWACS, and when it became obvious that it performed a critical role and was reliable and so forth, NATO came on board and said, "Yes, we'll have one too." But I wonder, if we had started by trying to get 14 nations together on what AWACS should look like, would we still be arguing about one for 1995 with three radar domes on top of it? The F-16 program also has been quite successful. Certainly a common apprach is a good idea, but we need to work within coalition realities.

AFJ. What are some of the new programs that you're excited about?

General CREECH. I'm a big fan of PLSS [Precision Location and Strike System]. It does something we can't do today; it gives us a user's map of where all of those electronic threats are in real time. And that is absolutely imperative. If you think about it, PLSS is the enemy ground threat what the AWACS is to the enemy air threat. It collects, reaches out there with a huge vacuum cleaner and scoops them all up, and tells you exactly where they are. I don't want to find out where their SAMs are located by totaling up our losses. I want to know where they are beforehand.

AFJ. What other new programs are you gung-ho about?

General CREECH. I'm very gung-ho about Compass Call. We have four airplanes now—C-130 communications-jammer platforms with special high-gain antennas—and more are coming. When it flies along on our side of the border and turns on all those jammers, he won't be able to talk MiG-to-MiG, MiG-to-ground, ground-to-MiG, and we even can jam some of his SAM links.

This gets us into his C^3 nervous system. That disrupts anybody; it certainly gives us fits. It will do even more violence to him because he is so dependent on his rigid command and control system. That's strength when you can make it work, but it's also a uniquely exploitable weakness because he can't do without it—it stems from his national way of life.

We sometimes call AWACS the force multiplier, Compass Call is the world's greatest force subtracter.

AFJ. Everybody talked about spare parts two or three years ago, and now that the money is finally beginning to develop, it seems to be a subject a lot of people forget. Are you able to attract alternate sources of supply? Is the increased spares budget paying off in higher readiness rates?

General CREECH. We're better off than we were, but we're not nearly as good as we need to be. Part of that is because we had gone so low in the late '70s in the logistics support accounts. Are we feeling the effect of increased funding? Yes. Those parts are beginning to show up, but not in huge numbers yet.

AFJ. What would you say is the greatest strength and weakness in Tac Air?

General CREECH. Let me start with our greatest weakness, which is our inability to fight at night. That is when the enemy hits hardest, and that's when we are going to have to fight to survive and to get the most out of every single piece of equipment.

Our greatest strength? American know-how. When we choose to field it, we have the world's best equipment. It works well; it is reliable. I think the Israeli Bekaa Valley campaign vs. the Syrians showed what good equipment can do. But the other part of the know how equation is found in our military people. For example, we have the finest air crews in the world, bar none, and they are exceedingly well trained. They're being trained more realistically than ever before, and we know how to get them to where they need to fight. He enjoys the numbers, but we have the greater know-how and experience; our equipment is better, and our people are better. We just have to keep that going—without letting the quantitative difference grow too wide.●

OUR AGRICULTURAL RECESSION

● Mr. ANDREWS. Mr. President, those of us in rural America are well aware of the crises facing American farm families. The challenge is to communicate this pressing concern to those who live in the urban areas of our Nation—areas with serious problems of their own. Many of our leading economists realize that when the farm economy is in a state of shock, the tremors are felt throughout the remainder of our society. We must respond to the economic needs of American agriculture, not only because of the destabilizing impact of the economic recession on those of us who live and work the land, but, also, because of what it means for the rest of America.

Therefore, Mr. President, I would like to call to the attention of my colleagues, an article in the New York Times of January 27, which discusses the far reaching impact of our agricultural recession. Written by Dr. Jean Mayer, president of Tuft University, and former Chairman of the White House Conference on Food, Nutrition

and Health; its significance to me is not only based on its factual information and thoughtful concerns, but that it is written by an individual who does not represent the agricultural industry or serve as a spokesman for the American farmer. As one who is concerned about the broad spectrum and interrelationship of our economy, I recommend this article by Dr. Jean Mayer. I ask that the article be printed in the RECORD.

The article follows:

MORE AID FOR FARMS

(By Jean Mayer)

Farmers constitute just 4 percent of our population; only half of these farm full time. Most Americans are well aware of the dismal conditions in the auto, steel and housing industries but few remember that agriculture is the nation's largest industry—bigger than all of these three combined.

Agriculture puts about $140 billion a year into goods and services. Agriculture and food generate one in five jobs in private industry and account for 20 percent of the gross national product. Our 1982 agricultural exports brought in $39.1 billion and a $23.7 billion surplus in foreign exchange, which partly offset the $57.2 billion deficit in our nonagricultural trade.

Profit in farming, as in any other business, equals price times volume less cost. Food prices have risen, but most of the increase has come at the processing, transportation, wholesale and retail levels of our nationally distributed food supply. Volume is up, but our grain surplus is twice as large as it was in 1980, depressing prices farmers get for their commodities. Meanwhile, farmers' costs have skyrocketed.

Washington's "light bulb" approach to providing food abroad (turn it on, turn it off) has harmed our farmers and benefited agricultural competitors (in Canada, Western Europe, Australia and Argentina). Food-as-a-weapon turns out to harm our farms more than our adversaries.

In its new payment-in-kind program, the Administration has found a way to help farmers while saving some $1 billion a year. This makes good fiscal sense, but making more Government-stored grain available for sale will not immediately solve the basic problem of low prices that farmers are paid. Even with the acreage-reduction program, huge surpluses will remain. In the next year, there is no reason to expect improvement in prices.

Three-quarters of our farmers must borrow to produce their next crop. The average production loan is $89,600. In 1982, farmers' interest costs were about $23 billion, according to provisional Government data; interest rates are down but not far enough. Farm debt has doubled in the last five years and, as of Jan. 1, was $215 billion.

There is a real danger of a wave of farm bankruptcies, like those of the late 1920's, which could set off a similar ripple effect throughout the economy. One farmer may sell his holdings for a reasonable price. When a number in an area are forced to liquidate, prices drop to a fraction of the assets' value. In Iowa, for example, farmland that in recent years had sold for $3,000 to $4,000 now goes for no more than $1,800. Usually, the only buyers are other farmers. Sales prices set the value of collateral for the next loan to farmers who remain in business. Clearly the situation is extremely serious.

Food stamp and other Federal feeding programs constitute an indirect subsidy to farmers. Administration budget cuts thus have injured the farm economy and have been detrimental to the health of America's poor. Past and proposed cutbacks in these programs should be reconsidered.

As for the world's poor, there will never be a better time to use our enormous quantity of surplus grain to establish a global system of adequate reserves against future shortages.

While the payment-in-kind program permits retirement of some secondary land that is most susceptible to erosion, the nation also needs a far more vigorous land-retirement program together with an expanded effort in conservation. Farmers, along with the Government, are the major conservators of land and water resources. Each year, nationwide, erosion destroys the equivalent of 1.5 million acres of prime land. Farm water resources are being depleted as a result of pollution, salinity, the mining of ground water, and acid rain. Insect infestations destroy food crops and damage timber. We cannot expect farmers to bear the major costs of conservation any more than we can expect them to carry a major burden of our conduct of foreign affairs.

The Administration's first steps toward maintaining farmers' income and toward a sound international agricultural policy stir hope. Now, steps on conservation and reserves are awaited.●

WHO WILL FIGHT?

● Mr. DOLE. Mr. President, I would like to preface my remarks at this time with a quote from Vladimir Bukovsky's book "And The Wind Returns," translated into English as "To Build A Castle."

But how will it be with the worker Borisov, or the stonemason Gershuni, with the students Novodvorskaya and Ioffe, the set designer Viktor Kuznetsov? None of the academicians will raise a fuss over them in the central committee, and the world scientific community will not threaten a boycott . . . who will fight for them?

The answer is, or course, that the cases of many Soviet Prisoners of Conscience have been taken up by individuals and organizations all over the world, regardless of the race, religious beliefs, economic or social status, or even the political viewpoint of the Prisoner of Conscience. And, more precisely, when we think of academicians standing in the forefront of the struggle for human rights in the Soviet Union, the name that invariably comes to mind is that of reknowned Soviet physicist, Dr. Andrei Sakharov.

As most of my colleagues are probably aware, January 22, 1983 marked the third anniversary of the forced exile of Doctor Sakharov from his residence in Moscow to the city of Gorky. The depressing sequence of events that led to this brave man's persecution and exile by Soviet authorities is common knowledge throughout the free world. For his selfless efforts on behalf of human rights in his homeland, for full implementation of such international agreements as the U.N. Declaration on Human Rights and the Helsinki Final Act, for genuine world peace, Andrei Sakharov was honored by the free world with the Nobel Peace Prize. His own government, on the other hand, chose to strip him of his livelihood, his academic honors, his right to publish.

But it could not strip him of his dignity, his sense of duty to mankind. Doctor Sakharov continues, even in the most difficult of circumstances, his pursuit of scientific advancement and his defense of the victims of Soviet injustice. In his appeals to his own government and to the free world, he has called attention to the plight of distinguished Russian biologist Sergei Kovalev, Father Gleb Yakunin, founder of the Russian Orthodox Christian Committee, the Georgian musicologist Merab Kostava, Mykola Rudenko, leader of the Ukrainian Helsinki Group, whose wife Raisa followed him into the camps for protesting her husband's unjust imprisonment.

Also the Estonian orthinologist Mart Niklus, Lithuanian human rights activist Viktoras Petkus, Moscow Helsinki Group founder Yuri Orlov, and, of course, Jewish emigration activist Anatoly Shcharansky. And this is only a partial list. In his statement to the 1982 Pugwash Conference on International Cooperation, Andrei Sakharov mentions over 20 Soviet Prisoners of Conscience, without once having referred to his own arduous circumstances, such as having had to conduct a prolonged hunger strike with his wife Elena Bonner, so that the Soviet Government might "graciously" accede to his stepdaughter's request for permission to emigrate from the Soviet Union and join her husband in the United States.

AND A BRILLIANT SCIENTIST

The Soviet Government has not only sought to deprive its own people of an intercessor for the victims of repression in the Soviet Union, but has also committed a serious offense against all of humanity. The extent of Dr. Sakharov's contributions, both past and potential, to the study of physics has only begun to be realized. According to an article in the Washington Post Book Review, Sakharov's scientific writings, only recently published in English, reveal an extraordinary degree of scientific accomplishment and anticipation of recent developments in physics. Imagine what Dr. Sahkarov might be able to accomplish in decent scientific surroundings, free from police harassment, without the fear of having his scientific and personal papers stolen. In the past 4 years, Dr. Sahkarov has reported four such incidents. The situation has become so acute that I have been informed that Dr. Sakharov has appealed to the Helsinki signatory states for humanitarian and legal aid to protect him from acts of violence against

him. In Sahkarov's own words, the state prosecutor has threatened to "call him mercilessly to account" for his human rights activities. It would be interesting to know what the prosecutor has in mind. Perhaps assaults by "unknown assailants" on the street, as is frequently the case with those whom the Kremlin considers "troublesome," or can we expect a full-fledged show trial, complete with KGB-tutored witnesses and handpicked spectators assigned to keep "undesirables" out of the court-room.

Mr. President, the Soviet Government's treatment of Andrei Sakharov is an outrage. If the Soviet Government is genuinely interested in world peace and disarmament, it must realize that actions speak louder than words. And presently, the words emanating from the Kremlin sound hollow indeed, while the KGB attempts to stifle the noble voice in Gorky.●

THE ULTIMATE EVIL

● Mr. GOLDWATER. Mr. President, recently I came across an article by Maj. Gen. Robert F. Cocklin, U.S. Army, retired, concerning the wide variation between our democratic system as it is taught to students of political science and the real way in which our democracy works when decisions are made in Washington.

My colleagues are well aware of the yearly ordeal of dealing with the Defense budget, along with the many other appropriations bills which we act on in the course of a session of Congress. Most of my colleagues are also well aware, if they stand back to look at the process, that we do a poor job in formulating our defense posture on its merits. We are more inclined to let politics creep into the equation. As I have said often before, we have tended to act as though we were defending different regions of this Nation instead of the entire Nation.

The result of some of these sporadic activities by Congress is that no civics class, as General Cocklin has pointed out in his article, could possibly understand what we are doing. I urge that my colleagues read the editorial article by Major General Cocklin and that we all take a vow to conduct the legislative process so as to act in the national interest, whether we are dealing with a defense bill or a social program.

I ask that the article entitled "The Ultimate Evil" by Maj. Gen. Robert F. Cocklin be printed in the RECORD.

The article follows:

THE ULTIMATE EVIL

It is probably a good thing I never strove to be a civics teacher. I wouldn't be a good one. My direct Washington exposure to our democratic system varies considerably from what I was taught in school. It has made me somewhat dubious that we as a country or as a people can ever accomplish the true greatness that is within our capability but constantly eludes our grasp.

We have just concluded a mid-term election which, for many political reasons, caused us to avoid facing the basic issues that both emasculate our economy and debilitate our defense posture.

Yet with the ballots scarcely counted, prospective presidential candidates for 1984 are already launching their unofficial campaigns, as have some of their colleagues in the House and Senate. As a result, we will now go through another two years of avoiding directly the gut issues that not only plague us but disconcert our allies, and will be plastering over much that needs serious change. Common sense and good judgment will be trimmed and tailored to meet what is perceived to be the best interests of prospective candidates rather than those of the country.

The defense budget, for example, has little chance of being judged on its merits. It will be judged, rather, on perceptions of how much of the national budget it is acceptable politically to put in to it, and this compared to the social welfare portions of our national outlays. Make work jobs will compete very heavily in this arena. Our commitments overseas, the threats to our national interests and all the truly vital facets of the modern world that bear so strongly on what our defense posture ought to be will get less consideration than will other influences.

Can you imagine the absurdity, for example, of the National Conference of Catholic Bishops impacting significantly on our strategic policy with their uninformed nuclear freeze and unilateral disarmament proposals? But since they are perceived to have some potency politically their views will receive attention. Explain that to your civics class—never mind that business about the separation of church and state.

Francois de Rose, France's former Ambassador to NATO from 1970-1975, put some of what disturbs me into perspective in an article appearing in the Fall issue of *Foreign Affairs*: "It is difficult to argue about moral issues. But one can legitimately consider that the sin lies with aggression and not with preparing to defend oneself with whatever means, even if that 'whatever' includes the atom. The ultimate evil would be in a doctrine that would guarantee immunity for the aggressor and devastation and loss of freedom for the peace-loving nations. To make the world safe for aggression would be the apex of immorality."

That seems a cogent point to apply to our whole system. We are in danger of succoring the "ultimate evil" if we cannot find a better way of providing constancy and believability in our defense program and some protection from the fickle winds of political expediency which blow without interruption across what seems a treeless plain.

But that's our system—and better we should recognize its worth and get on with the business of making it respond to the extent we can. We must be persuasive—while credible—forceful but honest—and above all indefatigable. In the end, we'll move forward a few strides. It's a cumbersome, wasteful way to do business but it is still better than any of the alternatives. I would find it very difficult to explain it logically to a civics class—assuming we still teach civics.

May God bless all of you in the coming year.●

R&D PROGRAMS IN THE PROPOSED FEDERAL BUDGET

● Mr. DOMENICI. Mr. President, I would like to take this opportunity to examine one particular area of the President's proposed budget. It is worthy of praise not because it is the subject of a proposed increase of 17 percent to $47 billion, but because of the way in which that increase has been targeted. I speak of the research and development programs in this proposed Federal budget. These increases which I will discuss in further detail in a moment are aimed at those areas of greatest potential. By potential I mean areas where advancement will have positive effects on our economy and its long-term strength. This proposed budget focuses on university research, principally through an increase of 18 percent for the National Science Foundation, so as to further the training of scientific and technical personnel. Furthermore, several programs to enhance science and math education in universities and secondary schools are embodied in this budget proposal, thus reinforcing the theme in this budget that we must prepare our youth for a society with increasing technical complexity.

Mr. President, as I stated earlier this proposed R&D budget represents a 17.2 percent increase over fiscal year 1983 and more strikingly, a 25.0 percent increase over fiscal year 1982. Some will argue that the good news represented by this budget is really only for defense related research. Some will focus on particular projects or programs for which there is a proposed reduction. By targeting increases in certain areas of high potential the President has assured these criticisms will be forthcoming, but further inspection of the proposed budget will, I believe, demonstrate the sincerity and vision of this proposal. I will include in the RECORD at this point a table showing the funding for basic research in this budget. Overall, basic research would receive a 10-percent increase from $6.0 billion in fiscal year 1983 to $6.6 billion in fiscal year 1984.

As I mentioned earlier, Mr. President, this proposed budget encompasses several initiatives in the area of science and math education aimed at improving the current level of education and encouraging talented young researchers to stay at their universities and teach young people on their way up. At the secondary school level it would provide a scholarship program for about 40,000 teachers over the next 3 to 5 years. This program would require non-Federal matching funds as would a research support program for about 1,000 outstanding young Ph. D.'s in university research. This program would provide $100,000 per year for up to 5 years. In order to help revitalize our research equipment

at the university the budget would call for up to $400 million for the purchase and replacement of scientific instruments.

Mr. President, obviously the Congress will review this proposal and make modifications where we feel it is necessary. I believe that the R&D budget proposal before us is an excellent proposed budget, targeted at appropriate programs. I will include in the RECORD two further tables taken from the President's proposed budget.

The tables follow:

CONDUCT OF BASIC RESEARCH

	Dollars in millions (fiscal years)		Percent change (fiscal years)	
	1983	1984	1984 to 1983	1984 to 1982
Total basic research	6,025	6,619	9.9	21.7
DOD	769	867	12.7	26.4
Non-defense	5,256	5,752	9.4	21.0
NIH	2,049	2,086	1.8	13.4
Other	3,207	3,666	14.3	25.8
Agencies supporting primarily life sciences	2,678	2,755	2.9	13.7
Agencies supporting primarily physical sciences and engineering	3,347	3,864	15.4	28.1

TABLE K-2.—CONDUCT OF RESEARCH AND DEVELOPMENT BY MAJOR DEPARTMENTS AND AGENCIES

[In millions of dollars]

Department or agency	Obligations			Outlays		
	1982 actual	1983 estimate	1984 Estimate	1982 actual	1983 estimate	1984 estimate
Defense military functions	20,576	23,179	29,882	18,201	21,847	26,844
Energy related activities	4,758	4,712	4,713	4,974	5,012	4,911
Health and Human Services	3,935	4,316	4,416	3,978	4,262	4,339
(National Institutes of Health)	(3,432)	(3,771)	(3,842)	(3,438)	(3,737)	(3,808)
National Aeronautics and Space Administration	3,084	2,506	2,473	3,220	2,386	2,421
National Science Foundation	975	1,060	1,240	1,014	1,002	1,137
Agriculture	798	850	849	808	839	848
Transportation	309	393	519	349	376	451
Interior	381	373	329	392	411	348
Commerce	290	312	227	285	315	249
Environmental Protection Agency	335	241	208	336	295	250
Nuclear Regulatory Commission	221	210	200	209	210	200
Veterans' Administration	140	165	163	138	157	156
Agency for International Development	165	152	161	179	200	152
All other	388	391	418	426	425	433
Total	36,354	38,860	45,796	34,509	37,735	42,741

TABLE K-3.—CONDUCT OF BASIC RESEARCH BY MAJOR DEPARTMENT AGENCY OR ACTIVITY

[In millions of dollars]

Department or agency	Obligations			Outlays		
	1982 actual	1983 estimate	1984 estimate	1982 actual	1983 estimate	1984 estimate
Agencies supporting primarily physical sciences and engineering:						
National Science Foundation	916	998	1,181	954	943	1.083
Energy related activities	777	861	1,021	774	859	1.001

TABLE K-3.—CONDUCT OF BASIC RESEARCH BY MAJOR DEPARTMENT AGENCY OR ACTIVITY—Continued

[In millions of dollars]

Department or agency	Obligations			Outlays		
	1982 actual	1983 estimate	1984 estimate	1982 actual	1983 estimate	1984 estimate
Defense—military functions	586	769	857	603	746	776
National Aeronautics and Space Adminstration	538	605	682	537	588	658
Interior	74	88	89	74	89	94
Commerce	17	18	16	16	16	17
Other agencies	9	7	8	9	7	8
Subtotal	3,017	3,347	3,864	2,967	2,249	3,636
Agencies supporting primarily life and other sciences:						
Health and Human Services	1,953	2,184	2,238	1,962	2,154	2,214
(National Institutes of Health)	(1,840)	(2,049)	(2,086)	(1,835)	(2,022)	(2,058)
Agriculture	331	362	381	338	356	380
Smithsonian Institution	55	60	68	47	60	62
Environmental Protection Agency	33	21	17	30	25	22
Veterans Administration	13	15	15	13	15	15
Education	16	16	14	22	22	18
Other agencies	22	22	22	22	23	13
Subtotal	2,422	2,678	2,755	2,434	2,655	2,723
Total	5,439	6,025	6,619	5,401	5,904	6,359

AMERICA'S DISPOSSESSED AND A JOURNALIST'S KEEN VIEW OF THEM

● Mr. MOYNIHAN. Mr. President, over the holidays, an extraordinary set of nine editorials appeared in the pages of the Washington Post that taken collectively, represent one of the most compelling arguments in support of action to alleviate the condition of America's poorest citizens—its dispossessed, homeless, and often hopeless men and women.

The writer responsible for this series, the gifted journalist Jodie T. Allen, began her work on December 23, 1982, the day the 97th Congress adjourned. Would that we all might have had this sobering series in hand before departing for our individual holiday celebrations.

She has described the often pathetic reality of life on the streets for America's estimated 500,000 to 2 million dispossessed. It is a measure of our serious neglect for the homeless that we do not precisely know how many of them there are. "This is not a country," she declares at the outset, "where families can live under bridges or in 'cardboard cities' while the rest of us have our turkey dinner."

She persists—cataloging the indifference that policymakers frequently attach to the question of the homeless and the miserable conditions that those who suffer are forced to endure. And the series concludes, as the year came to an end, with a sensible set of suggestions on what we might do in response.

Mr. President, editorials on the poor are as plentiful as the wealth of the Nation that has allowed such misery to perdure. This series from the Post is different; is special in its eloquence, and commanding in its force.

I ask that it be printed in the RECORD so that my colleagues might read it. All should.

The material follows:

[From the Washington Post, Dec. 23, 1982]

AMERICA'S DISPOSSESSED

Most people around the country are preparing to enjoy the abundance of the holiday season. Merchants may complain that Christmas sales are slow, but the wariness of the average shopper has less to do with any actual reduction in his purchasing power than with a slight feeling of guilt that comes from knowing that, for many Americans, good times are not just around the corner.

The most emblematic reminder of that distress is the national unemployment rate, which tells us that 12 million people, 10.8 percent of the U.S. labor force, are now jobless. If you're interested in more statistical detail, you can find out that in some areas the unemployment rate is more than twice that national average.

You'll also find that the duration of unemployment has been increasing—2.3 million people have been out of work for more than six months—and that over the course of the year, perhaps a quarter of the labor force will suffer some unemployment. Two out of five of the unemployed will never get their old jobs back because those jobs have been permanently abolished.

Still, for most Americans, the statistics don't tell the story. Far more immediate reminders of hard times are the homeless people who now haunt almost every shopping center, business section and neighborhood. Even at the height of America's prosperity, these beggars-at-the-feast appeared now and then to remind the affluent that there were still dark corners in the nation's social structure. Now, however, such people—the dispossessed—are becoming harder to ignore, not only because they are numerous but also because many of the newcomers bear a distressing resemblance to the family next door.

America's displaced persons now come in all sizes, shapes and colors. There are still the traditional winos and drug addicts. The bag ladies are a relatively newer phenomenon, but they are already a familiar part of the urban scene. Now they are being joined by displaced workers and their families who, having run through whatever savings and unemployment benefits they had, have been forced out onto the nation's streets and highways.

No one knows how many displaced people there are—you can get estimates ranging from a half-million to 2 million, depending on whom you ask—but there is no dispute about the fact that their numbers are growing. And there should be no dispute about the fact that this rich society has an overriding obligation to rescue these people from a fate that is unacceptable in America. This is not a country where families can live under bridges or in "cardboard cities" while the rest of us have our turkey dinner. In the next several days, we intend to come back

repeatedly to this subject, by way of observing the Christmas Season, 1982.

[From the Washington Post, Dec. 24, 1982]

AMERICA'S DISPOSSESSED: WHO CARES?

Who will help you if you're not lucky enough to catch the President's eye? Suppose you've been out of a job for months and your family is about to be evicted. Or you've been wandering the streets ever since the mental institution that used to be your home decided you were cured. Where can you turn?

Some people in trouble do get lucky—if that's the proper word for it. Some show up in a public shelter with photogenic children who attract the media's attention. That will bring an outpouring of clothes and food and even job offers. Some, like Reginald Andrews of New York City, come to national fame. Mr. Andrews, the father of eight children, has been unemployed for a year. Last Monday, while returning from applying for a job as a meatpacker, he saved a blind man who had stumbled between two cars of a subway train. His heroism earned him a job offer from the meatpacking plant.

Mr. Andrews also received a telephone call from President Reagan, who is frequently moved to such action when individual acts of heroism or hardship are brought to his notice. No President, however, can talk with each of the 12 million jobless or the more than 30 million people living in or near poverty, much less deal with their problems on an individual basis. They need more tangible kinds of help.

For most of the unemployed, the first source of help is unemployment benefits—now running at an annual rate of more than $30 billion. But unemployment benefits are usually low relative to prior earnings, and they run out—less than half of the unemployed now qualify. The next recourse is help from friends, relatives or union organizations. But in many areas where the plants or mines that were the primary source of jobs have shut down, more than half of the labor force is unemployed, and few people can afford to provide steady help to their neighbors.

Public welfare is one possible resort—if you're willing to sell off most of your assets or let the government put a lien on your home. And even then, in many jurisdictions you can't qualify for anything but food stamps if you don't have young children or if there is an able-bodied man in the house. As the unmet needs grow—and as the federal aid that sustained many nonprofit community services shrinks—charitable organizations are stretching their already strained resources to fill the gap. Congress wanted to provide an extra $50 million to help these organizations, but dropped it from the omnibus appropriation passed this week for fear of a presidential veto.

There are other limits to relying on voluntary charity. Most Americans are glad to donate food or clothes or money, or to organize charity drives and benefits. But many of the down-and-out aren't very appealing people up close. It's hard to persuade middle-class people to drive each day to where the poor are, to work in soup kitchens and shelters, to quiet the deranged, sober up the drunk and find jobs for the desperate. Most of the burden of hands-on private charity tends to fall on the people who should find it hardest to bear—the residents, churches and other institutions of the inner city who, to their great credit share their scant resources with those still less fortunate.

There is something to be said for symbolic gestures as an instrument of leadership. But Mr. Reagan's gestures really have no particular beneficial impact. They concentrate the public attention on what a nice fellow he is when confronted by the specific suffering of another. But they do not show the way to any kind of relief for those who are victims of economic and social forces beyond their control—circumstances for which Mr. Reagan himself bears some degree of responsibility.

How much more moving it would be to know that he was inspired to take action to alleviate the distress of people newly brought to hard times than to know that he has telephoned to encourage one of them. Mr. Reagan wants people to know he cares. People want to know that he cares enough to do something about it. For that we all still wait.

[From the Washington Post, Dec. 25, 1982]

AMERICA'S DISPOSSESSED—CHRISTMAS ON THE GRATES

Who are all these people huddled on the heating grates outside government buildings, department stores and around the nation's monuments? Why have they kept upsetting our Christmas cheer as we hurried home from office parties and present-buying? Isn't there some place for them to go where, at least, we won't have to think about them all the time?

These are the dregs of the nation's homeless—the winos, the beggars and the bag ladies. They're more obvious these days because they have fewer places to go. They used to spend their nights in jails or single room occupancy hotels. Many once resided in public mental institutions. But urban renewal has displaced the flophouses and missions in many cities. And civil rights activists persuaded courts that it wasn't right to lock people up just for being drunk—and anyway the jails are full with other, more serious offenders.

Perhaps a quarter of the street people are refugees from mental institutions. They were dispossessed by the enthusiasm for "deinstitutionalization" that swept the country a few years ago. Well-meaning liberals argued that it was wrong to keep people locked up now that new drug therapies make it possible for many mentally ill people to function fairly normally. That argument also appealed to the fiscal conservatives, who saw great savings from closing the institutions that once housed them. The solution worked well for those patients who could return to jobs or caring families. But the halfway houses and job opportunities that were supposed to sustain most of those ejected never materialized in even near sufficient number.

Neither did the rehabilitation centers that were supposed to handle the alcoholics. Nor the substitutes for the cheap housing and shelters displaced by urban renewal. Now all their former occupants are crowding the soup lines, missions and hastily constructed public shelters in cities from coast to coast. Together with the long-term unemployed, many of these people are sleeping on grates and in makeshift cardboard shelters or sitting up overnight in church pews and public restrooms. Occasionally some will threaten suicide or other violent acts in hopes of being locked up in a warm safe institution. And occasionally some of them will freeze to death.

It's not easy to help some of these people. Many won't go to shelters because they fear—often with good reason—that they will be brutalized by other occupants or even by shelter guards. Many are terrified of human contact, lost in the horrifying world of the insane. But it doesn't require a full flight into madness or alcoholism to earn you a spot on the grates. All it takes is a broken family, lost savings, a disability that won't meet the government's toughened standards for aid or a Social Security or welfare check that won't pay the rent.

Now and then you will see a street person—a bag lady, perhaps, with her head held high and an air of faded gentility about her shabby clothes—who will remind you that, even in this wealthy nation, there is no sure guarantee against having to sleep under bridges and beg in the streets.

[From the Washington Post, Dec. 26, 1982]

AMERICA'S DISPOSSESSED—THE NEW MIGRANTS

As the holiday weekend comes to a close, and you settle in, perhaps, for a day of football and turkey sandwiches, thousands of other people will be moving through towns and cities looking for food, shelter and a job. Just about a year ago, President Reagan suggested that people who weren't happy with the high unemployment rates in their home towns should "vote with their feet." Since that time, many jobless workers have found they have no other choice.

These people have used up whatever unemployment benefits or savings they had, been evicted from their apartments or sold their homes for whatever they could get. They've said goodbye to their friends and relatives, left behind all those familiar landmarks—schools, churches, bowling alleys, shops, bars and meeting places—that make a community home. Now they're living in cars, trailers, tents or cardboard huts. They move around the country searching for something they're not likely to find—a well-paid job that can be done by a man with few skills and a lot of pride.

Not many communities have welcomed them with open arms. Even in the flourishing Sunbelt, jobs have become hard to find. The tradition of community responsibility for the destitute is also less firmly rooted in the fast-growing cities of the South and West, which, even in good times, are used to warding off drifters in search of sunny climes. Public shelters are almost nonexistent, privately run missions and soup kitchens are overflowing.

In Phoenix, for example, local ordinances make it a misdemeanor to sleep in a public place or pick through garbage. Urban renewal efforts have closed down all the private shelters, flophouses and other refuges in the downtown area. These laws weren't aimed at the new group of homeless. They were meant to discourage the hundreds of alcoholics, drug addicts and refugees from mental institutions who frequented the downtown area even when times were good. Now, as the number of homeless has swelled into the several thousands, the city has designated a "neutral zone" in which the destitute can camp out. It has also allowed a private charity—which already provides job-finding and other help for transient families—to raise money for an emergency shelter.

In other localities, the only help for transients is free gas and auto repairs, provided in the hope that the homeless will keep moving. Here and there, the quality of mercy is strained to the breaking point. A Fort Lauderdale councilman, for example, suggested some months ago that local busi-

nesses spray their dumpsters with kerosene so that hungry people would quit foraging. Perhaps he got the idea from the Californian's Depression-era method of discouraging the Okies by squirting surplus oranges with kerosene and dumping potatoes in the rivers. Happily, other city officials were not interested.

It's impossible to know how many of the jobless have been forced out onto the nation's streets and highways. They don't line up to be counted, and many are too proud even to ask for help. But there is ample evidence that their number is large and growing. The shame of it is not contingent on their numbers. It is enough that more people daily are being reduced to such a life in our prosperous country. There is, as John Steinbeck once wrote, a failure here that topples all our success.

[From the Washington Post, Dec. 27, 1982]

AMERICA'S DISPOSSESSED: SEARCHING FOR JOBS

Today in America there are 12 million people looking for work. Millions of other jobless people have either become so discouraged they've quit trying to find a job or have taken part-time work until they can find a full-time job. Why can't these people find work? After all, there are still help wanted ads in the papers, though admittedly only around half as many as two years ago. The trouble is that many of the available jobs require skills and education possessed by few of the unemployed. Openings do occur in less-skilled jobs: even in the worst depression normal turnover produces some vacancies. But for most of them there is a line of job-seekers waiting.

Recently in Los Angeles, about 1,000 people—some in upper-middle-class attire—lined up to apply for five manual labor jobs. These jobs, however, paid up to $1,380 a month. Further down the heap are the menial jobs that have become the property of illegal immigrants and other fringe members of the society. When the immigration service launched a drive to oust illegal workers from these jobs last spring, employers claimed that they could find no other takers. Perhaps the employers didn't try very hard—illegal status makes docile workers—but when the Wall Street Journal tracked down some U.S. workers who took them, they found that nearly all had quit within a few days. Low pay and harsh working conditions were part of the reason. But so was self-respect. Stigma attached to the kind of work currently reserved for aliens. Minimum level wages are now derided as "women's pay."

Perhaps that attitude partly explains why women haven't been hit as hard by this recession as men have. But before you prescribe a steady diet of minimum wages for the unemployed, remember that the minimum wage is now frozen at $3.35 an hour. In terms of purchasing power that's about 25 percent less than the minimum wage in 1975. After payroll deductions, transportation and other work expenses, a minimum-wage worker clears less than $6,000 a year, far below the official poverty level for a family of four. Try providing food, clothing, housing and medical care for a family on that amount of money—even if you're eligible for government supplementary assistance—and you'll see why breadwinners can't settle for it.

Of course many people who are trained for and accustomed to better-paid work have taken such jobs to make some livelihood anyhow. But this kind of drop in living standards—especially after people have "paid their dues," worked their way up a bit higher—is not something that the average American, growing up in the prosperous decades since World War II, has been led to expect. There have been recurrent recessions to be sure, but government intervention in the economy and government insurance-type programs could be counted on to see everyone through, and sooner or later the jobs came back.

This time a return to normal conditions is not in the cards. Government policy has changed. And more is going on in the economy than the kind of cyclic downturn that comes from an excess of inventories or even an oil shock. While no one was paying much attention, the U.S. economy became internationalized, and a new wave of automation is sweeping through both the manufacturing and service sectors. This means more markets for the high technology that America excels at, but it also means that many of the jobs formerly held by the nation's displaced workers will, in the future, be done by either foreign workers or robots. Without substantial help, the worker in search of a decently paid assembly line job is likely to be on the road for a long time. That is why the help must come.

[From the Washington Post, Dec. 28, 1982]

AMERICA'S DISPOSSESSED: WHAT NEEDS TO BE DONE (I)

The common wisdom of mainstream economists is that there are no quick solutions for the economy's current malaise. Many people seem to think, however, that accepting this truism implies that you also accept the victimization of millions of people who suffer most directly from the recession. As long as you're properly sympathetic to the plight of this or that poor soul who comes to your attention, it is felt, you're absolved of any further responsibility for trying to alleviate the worst side effects of the economy's period of adjustment.

For example, Congress has just adjourned after adopting a budget for this year that further reduces many services and offers no new help for the unemployed beyond a few extra weeks of unemployment benefits. The administration, meanwhile, is preparing a budget that, by all reports, will call for additional reductions in basic social and educational services. All of these reductions will come on top of the earlier cutbacks made in the federal domestic budget—and the further retrenchments that have been forced on fiscally strained state and local governments.

It strikes us that the fatalism that powers this inaction—a fatalism indulged almost exclusively by the comfortably employed—is profoundly misguided. If you accept the notion—as we do—that in order to avoid a recurrence of the damaging boom-and-bust cycle of the last decade, the recovery is going to have to be long and slow, surely you also should accept a very direct obligation to see that the costs of the necessary adjustment do not fall disproportionately on a small part of the citizenry.

The inflationary cycle that fueled the extraordinary employment growth of the last decade caused many distortions in the economy. It impeded investment and penalized people who saved and those who lived on fixed incomes. But it had, at least, the virtue that it hit almost everyone. Not so unemployment—the tool that current economic policy has used to curb inflation. Even now the great majority of Americans are better off than ever before. This is especially true of those at the high end of the income distribution. But that prosperity—and the promise of even greater prosperity in the future—has been bought at the expense of millions of jobless and impoverished people, many of whom are now crowding into public shelters, living in cars or under overpasses or waiting in fear for the day when their unemployment benefits run out.

These people are part of a problem that is national—and caring for them is indisputably a national responsibility. There are things that Congress, with the administration's backing, should do as soon as it meets in January. Some are aimed at relieving immediate distress. Others will make sure that when recovery comes everyone gets a fair chance to share in its benefits. Over the next few days, we will share our notion of what should be done.

We are not suggesting that the federal government should throw all budgetary caution to the wind and launch a multi-billion federal program for the jobless. That could easily retard recovery. Nor should it start building federal shelters, running federal food lines or relocating families. State and local governments—and the private sector—have shown that they are willing and able to do the job—at least when there is federal leadership and federal money to prod and assist them. But there are ways to help people that will not only encourage them to adjust to necessary economic change, but speed economic growth as well.

If you are worried about "wasting" government money, remember that still larger costs—monetary and moral—come from wasting human lives. The legacy of high unemployment lives on for many years in broken families, abused children, welfare dependency and the whole sad litany of human disorder. The country will need the talent and skills of all its citizens in the years ahead. Now is the time to make sure that no group is left behind.

[From the Washington Post, Dec. 29, 1982]

AMERICA'S DISPOSSESSED: WHAT NEEDS TO BE DONE (II)

When the administration and Congress finally get down to deciding how to help the nation weather its current distress, two rules should guide their efforts. Measures taken should focus on helping people hurt by economic change—not on propping up businesses threatened by that change. And, to the extent possible, the help provided should promote future economic growth by encouraging adjustment to the new realities of the labor market.

The first requirement is doing something for all those people living in tents and cars and on park benches. Passing the emergency relief appropriation that died in the last Congress is a necessary stopgap measure. It's all very well to rely heavily on churches and private charities to provide last-ditch help to the dispossessed. But it is positively unrealistic to expect them both to make up the money lost through recent cutbacks in government aid and also to expand their services to cover the new homeless. Federal money is scarce these days, so Congress should stifle its normal impulse to distribute program dollars far and wide, and make sure that emergency aid goes to those areas and people in the greatest distress.

Next on the list are some don'ts for the policymakers. Don'ts pass any protectionist legislation that saves the jobs of a few well-represented people at great expense to

everyone else. And recognize that you don't make the economy work better by cutting money for schools and colleges. All the experience of history will demonstrate that those economies do best that invest heavily in educating their citizens.

Further extensions of unemployment benefits are an unavoidable necessity. The federal government will have to pick up this tab—there is no sense pretending that the hardest-hit states can afford to pile up still larger debts to the Treasury than the billions they already owe. Unemployment benefits however, but only time, not adjustment. As long as there are hundreds of thousands of displaced workers waiting in vain for their old well-paid assembly-line jobs to reappear, the nation will have to cope with both an enormous social problem and a serious impediment to technological change. It's time to tie benefit extensions to help for the unemployed in getting back on their feet—more about this later.

And with millions of people running through their last dollars—for God's sake, stop cutting—or even proposing to cut—important social programs that are the last line of defense for the "old" and "new" poor alike. These include food stamps—which also need some relaxation of the absurdly strict rule that excludes families who happen to own a relatively new car or other small assets—and other nutrition programs that are needed for children.

Recognize that there are some people who are not—except perhaps in the statisticians' computations—in the potential labor force. Stop throwing people off the disability rolls and out of mental institutions when they haven't a chance in the world of finding gainful employment. Dumping more responsibilities on state and local governments isn't going to accomplish anything either. It just creates more unemployment while drying up services—such as child care, home care for the elderly, child abuse protection and other services that save money in the long run and help people who want to work.

These are all short-term expedients. They do require that the federal government reassert its responsibility—and, with all its obvious limitations, its real capability—to exert a positive influence on the nation's economic and social welfare. These emergency measures also need to be reinforced by longer-term efforts to help people and communities prepare themselves better for an economic recovery that will not put back the same jobs in the same places they were in before the downturn. And they need to be supported by larger economic policies that ensure that a sustained recovery does indeed arrive. These are subjects to which we will return in the coming days.

[From the Washington Post, Dec. 30, 1982]

AMERICA'S DISPOSSESSED: WHAT NEEDS TO BE DONE (III)

Hundreds of thousands of industrial jobs have been permanently lost to the economy. Without help, their former occupants are not going to have the skills and education that will be needed in the jobs of the future. Carelessly ignoring the plight of these workers is terrible social policy and an enormous waste of talent and physical resources. It is also likely to build a powerful political backlash against needed economic change.

What sort of policies could aid these people without creating entitlements and expectations that neither the government nor the economy will be able to fulfill? We suggested yesterday that further help should be provided on a quid pro quo basis: the government needs to do more for displaced workers, but those workers should be prepared in return to do things that some of them may find distasteful.

When Congress, as it must, again extends unemployment benefits, these benefits should be linked to measures that help the unemployed get back to work. Putting workers and their families on the road in search of work is not a happy experience for them or for the communities that receive them. These people need much better help in finding new jobs than the typically perfunctory assistance that the diminished staffs of state employment services now provide. A national effort, preferably with business involvement, is needed. If the jobs are in other areas, workers may need help in finding new housing for their families and in disposing of their present homes.

If workers can't be matched up with permanent jobs, those who want to qualify for more unemployment benefits should be enrolled in part-time training and also provided with temporary jobs in local government or charitable organizations. The model for this combination of low-cost community work with intensive training comes, of course, from the most successful of the CETA programs. The President has an aversion to anything by that name. Perhaps that's because he, like many other people, doesn't realize that CETA was not one but many kinds of programs, and that the best of these programs worked very well.

Don't worry about "make-work." If it was ever much of a problem, it certainly isn't now that states and localities have drastically curtailed community services and essential maintenance. And if you're careful about the kind of training the workers also get, they won't linger long on the public payroll.

Providing help in return for effort would have the additional advantage of weeding out unemployment recipients who don't really need further aid. The money saved would then offset the cost of providing jobs and training for the unemployed. It won't be as cheap as simply extending cash benefits—and it may not be possible to train and place all comers—but the nation would at least get something in return for its tax dollars—and so would the unemployed.

This temporary program would fit in well with the administration's longer-run plan to give the private sector a stronger role in designing training programs under the Job Training and Partnership Act passed last year—it already includes a small program for retraining displaced workers. But the federal government also needs to concern itself with seeing that new generations of workers don't enter the labor market without the skills that employers now want.

The federal government already spends billions of dollars on education aid, and it should. But it should put more pressure on schools to see that teachers and students meet tougher educational standards. The economy needs more graduates trained in mathematics, science, engineering and computer skills, and schools need more teachers qualified in these subjects. The federal government can use its substantial resources to encourage both.

These are measures that would reduce needless human suffering in ways that support economic recovery. They depend for their success, however, on the larger economic policies and political leadership that alone can ensure that recovery.

[From the Washington Post, Dec. 31, 1982]

AMERICA'S DISPOSSESSED: WHAT NEEDS TO BE DONE (IV)

Throughout this holiday season we have been talking about the most serious social and economic upheaval that the country has experienced since World War II. We've been looking at its casualties—the bag ladies, the derelicts, the abandoned children, their numbers now enlarged by hard times and the failure of the institutions and programs that once supported them—and the "new poor," the families out on the road in search of jobs or waiting hopelessly for their benefit checks to run out. We've suggested ways to lessen their immediate distress and to help able persons to find jobs in the economy of the future.

None of this will be easy in an environment of budgetary stringency and slow worldwide economic growth. None of it will succeed at all unless U.S. recovery not only starts soon but also keeps going for a period of years. That won't happen unless the president and Congress are ready to take forceful action to get the economy moving and to build public understanding of and support for the difficult steps that lie ahead.

One important reason that the current downturn has been so painful—that a return to a level of inflation once thought to be uncomfortable has been produced only by progression to a level of unemployment once thought to be intolerable—is that political, business and labor leaders haven't come clean with the American public. They have talked as if nothing fundamental had really changed in the economy, as if everything would go back to normal as soon as the nation had paid a modest price for controlling inflation.

That's not so. The auto industry will certainly revive—but not to its previous level. It will start buying more steel—but far less per car than it used to. Housing will pick up, but mortgage rates will never go back to 5 percent, and consumers should not be encouraged to invest as much of their personal savings in their homes as they did in the past decade. Financial markets have changed and so have tastes. Automation is changing production methods, and foreign countries are invading American markets—not by foul means but by the fair competition of better quality at lower prices. America can thrive again, but only if it makes substantial changes.

The president needs to start talking about this. And he needs to begin exploring ways to break the stalemate between business and labor that has impeded technological change and made high unemployment the only way out of inflation. Without agreement on restraining wages and prices, interest rates won't come down and economic recovery will be choked off before it has fairly begun.

Keeping interest rates down—the sine qua non of sustained recovery—also requires getting federal finances under control. There is room for argument about whether the relatively modest deficits of the 1970s impeded economic growth, but there is no disputing that future growth will be weak under current policies that imply enormous deficits even when recovery comes. Getting the budget onto a path that leads convincingly to lower future deficits requires firm action on both taxes and spending.

The president needs to get out in front in putting Social Security on a sound financial basis. It is fair to ask congressional leaders

of both parties to sign on to a deal, but it is neither reasonable nor responsible to expect them to take the lead.

Defense spending must be restrained. Even now the Pentagon is signing contracts that will force future outlays still higher than the ambitious targets the presidents insists upon. If the president won't take action, Congress ultimately will—but in ways that are likely to be both wasteful and harmful to national security,

There is still some fat in domestic spending—but it's all well protected by powerful interests. The administration needs to recognize, however, that most of what's left in the domestic budget buys things that people want—and are willing to pay for if it's made clear that that bill is falling due. That means raising future taxes, a subject unpleasant to more people than the president. The task will be easier, however, if any increase follows that precedent set by last summer's tax law—increasing revenues by making the lightly taxed pay their fair share of the tax burden.

There is a fine line between policies that lock the economy into outmoded patterns of production and those that lead to a costly and unnecessary upheaval in lives and communities. The administration and Congress need to keep that in mind as they look for ways to lead the country through a recovery that may seem, to many, painfully slow. They also need to remember that because the economy—not just this country's but the world's—is going through a period of substantial change, it's hard to know in advance which policies will work and which will not. What we all do know is that this country, for all its current troubles, is far too rich to ignore the plight of its dispossessed citizens—and far too wise and tough to persist in policies that don't grapple with the hard new realities of the 1980s.●

AMBASSADOR BURNS SPEAKS ON ECONOMIC AFFAIRS

● Mr. MATHIAS. Mr. President, the Atlantic Alliance is at a critical point in its development. Contrary to those apocalyptic news reports which appeared during the East-West pipeline dispute, the alliance is not on the brink of collapse. Nor is it business as usual.

The Atlantic Alliance is evolving in response to changing economic forces in the Western world. Recession has prevailed for more than 3 years, resulting in high unemployment, high interest rates, and myriad other intractable problems. It is hardly surprising, therefore, that the alliance is under great strain.

Last month these economic forces were described with great clarity and insight by Arthur F. Burns, our Ambassador to the Federal Republic of Germany. His speech, entitled "The Economic Health of the Western Alliance," deserves our closest attention. Few individuals are as qualified to speak on this subject as Dr. Burns, who served as Chairman of the Board of Governors of the Federal Reserve and Chairman of the Council of Economic Advisers.

Ambassador Burns' message is an important one. As competitors in the world market, the United States and Western Europe are bound to have a difficult relationship during these times of worldwide economic stagnation. Nor is economic prosperity likely to return in the near future. Yet he is confident, as am I, that by mobilizing our considerable economic and political resources, the Western Alliance can weather this storm.

Mr. President, I ask that Dr. Burns' address to the Deutsche Atlantische Gesellschaft, or the German Atlantic Society, be printed in the RECORD at the conclusion of my remarks. Difficult times such as these require extraordinary statesmanship, as Dr. Burns acknowledges in his concluding remarks. No prophet of my acquaintance is better able to fulfill his own prophecy than Dr. Burns.

The address follows:

THE ECONOMIC HEALTH OF THE WESTERN ALLIANCE

(By Arthur F. Burns)

I wish to thank the Deutsche Atlantische Gesellschaft for the opportunity to address your members and friends this evening. Since its establishment a quarter of a century ago, your society has faithfully supported the fundamental objective of the North Atlantic Alliance. You have never wavered in your devotion to peace or in your efforts to espouse the principles of individual freedom and democracy that constitute the moral foundation of NATO. In so doing, you have earned the gratitude of enlightened citizens of both your country and mine.

My purpose this evening, beyond expressing appreciation of your contribution to preserving international peace and freedom, is to discuss some of the economic issues that have recently been troubling the Western Alliance.

Economic factors inevitably have a significant impact on political attitudes that prevail in our respective countries, and they in turn can be decisive for the military effectiveness of the Alliance. In view of the immense role of the United States in world affairs, I shall concentrate on the economic relations between the United States and its European Allies. That these relations have been rather strained of late is a matter of common knowledge. That is reason enough for trying to see the American-European relationship in a sound perspective. Beyond that, it is vital to our Alliance to consider how well its economic underpinnings are being maintained and protected.

Since the end of 1979, both the United States and Western Europe have been experiencing considerable economic sluggishness or actual recession. That Western economies are vastly stronger than the economies of the Soviet bloc is a matter of considerable importance, but this can hardly justify complacency on our part. What needs to concern us is the state of our own economic health—how best to preserve and improve it. My first task this evening, therefore, is to examine briefly the sources of recent difficulties in the West.

The oil price shocks of 1973 and 1978 have certainly contributed to our economic problems. So too have other developments in the international marketplace, particularly the increasing challenge of Japan to some of our key industries as well as the new competition for a variety of Western manufactures from the more advanced of the developing nations. These external influences, however, have been less important for Western economies than difficulties of our own making.

During the early decades of the post-war period, the fiscal and monetary policies of Western democracies were highly successful in maintaining reasonably full employment and in improving social conditions. These very successes tempted governments during the 1970's to respond to the never-ending public pressures for governmental benefits by risking large budget deficits and easy money in the hope of expanding social welfare programs still further as well as attending to new environmental concerns. But by attempting to extract more and more goods and services from our economies without adding correspondingly to our willingness to work and save, we in the West inevitably released the destructive forces of inflation.

Under these conditions, it should not be surprising that tensions over economic issues have at times seriously tested the harmony that has generally characterized the political relations between the United States and its European Allies. When our individual economies are booming, there is little pressure on governments from their business or agricultural communities to protest or counteract activities being pursued in other countries. Such pressures tend to mount, however, in times of economic adversity. Difficulties that would be passed over under prosperous conditions then take on some importance—occasionally even a large importance. Gentle voices of spokesmen of economic interests are then apt to become loud and strident, and even the customary composure of academicians and high government officials tends to suffer. Human nature being what it is, that has been the usual experience of mankind and we have not escaped it this time.

There is, first of all, the issue of American interest rates. There can be no dispute over the fact that these rates have been extraordinarily high in recent years. Nor can it be denied that they served to attract funds to the United States from other parts of the world, that this movement of funds tended to raise interest rates in some European countries, and that business investment suffered to some degree as a consequence. If European complaints had stopped at this point, no one could reasonably quarrel; but many Europeans, including prominent government officials, at times went further and either stated or implied that American interest rates were responsible for the economic troubles in their countries. That line of thinking overlooked the fact that high American interest rates could not be responsible simultaneously for the still higher interest rates in France and the drastically lower interest rates in Japan. Needless to say, factors indigenous to individual countries—among them, the propensity of the public to save and the state of governmental budgets—always exercise some influence on interest rates.

Much of European criticism of American interest rates also stemmed from a misunderstanding of American policy objectives. Seeking to end the havoc wrought by inflation, our authorities proceeded on a principle that has been tested across the centuries—namely, that stoppage of inflation requires curbing the growth of money supplies. It is, of course, true that the high interest rates were in large part a result of our restrictive monetary policy. That does not mean, however, that we sought high interest rates.

On the contrary, the immediate effects of the restrictive monetary policy on interest rates and economic activity were by no means welcome, but this policy did achieve its fundamental purpose of curbing inflation in the United States. Since 1979, when the consumer price level rose more than 13 per cent, the rate of inflation has moved steadily lower. By coming down to less than 5 per cent this year, the inflation rate in the United States is now one of the lowest in the world.

The success of monetary policy in subduing inflation eventually made it possible for American interest rates to move to lower levels—partly through the inner workings of the marketplace and partly through adjustments of policy. The slowing of inflation encouraged the authorities to reduce monetary restraints, and the deepening of recession impelled them to do so. Economic conditions in the United States were, of course, primarily responsible for the consequent decline of interest rates, but our monetary authorities were also mindful of the benefits that the lower rates could bring to Europe. Since last year, when the rate that commercial banks charge their prime borrowers reached 21½ per cent, the prime rate has fallen to 11½ per cent. Open-market short-term rates have been cut in half. Long-term rates on corporate bonds and home mortgages declined less, but they too have fallen materially. The greater part of these interest rate adjustments has occurred since June, and Europeans rates followed American rates downward—although not to the same degree. As these financial developments unfolded, Europeans joined Americans in wishing that interest rates would move even lower, but what had previously been a significiant source of friction within the Alliance virtually ceased being troublesome.

Another recent irritant to some members of the Alliance was the stand taken by the American government on intervention in foreign exchange markets. The effectiveness of such maneuvers in stabilizing foreign currencies had long been a subject of serious debate among financial experts, including central bankers. Nevertheless, governments of leading countries kept intervening with some frequency during the 1970's, in the hope of smoothing out some of the short-run fluctuations in the exchange market. Being critical of these policies, the Reagan Administration announced soon after it came into power that, in its judgment, foreign currencies are best left to the free market and that it would therefore refrain from intervening except under highly exceptional circumstances. Not a few financiers and government officials welcomed this decision, and even some who questioned it were more concerned with the political consequences of non-intervention than with its intrinsic economic merits. There were, nevertheless, some determined European critics of the new American policy, and they made their influence felt—most notably at the Summit meeting held this June at Versailles.

While Americans held to their basic position at that meeting, they did propose that a committee of international experts study the results of past experience with intervention. By agreeing to such a study, all participants tacitly admitted the possibility that some of their views on intervention might need to be revised. Since then, the United States has gone further in the direction favored by its critics by actually intervening several times—albeit on a modest scale—in the market. There is reason for hoping that the foreign exchange study now under way may further contribute to narrowing the differences between the United States and some of its Allies. And if goodwill should be aided by good fortune, so that both interest rates and inflation kept coming down in our respective countries, the fluctuations of exchange rates would of themselves narrow and thus reduce both the impulse to intervene and the inclination to fret over the issue.

A far more serious conflict between the United States and its Allies was stirred by the decision of several European countries to support the construction of a Siberian natural gas pipeline. This conflict reached a climax when the American government, feeling morally outraged over the Soviet Union's role in suppressing the newly won freedoms of the Polish people, proceeded to forbid shipments by American firms of materials and equipment needed to build the pipeline. This prohibition was later extended to European subsidiaries and licensees of American firms. These actions led to acrimonious charges and debates, and some political observers on both sides of the Atlantic felt that American reaction to the crisis in Poland may have given rise to a crisis of the Alliance.

That danger, fortunately, was surmounted. Not only was damage to the Alliance kept down, but the pipeline controversy actually helped to steer Western thinking about foreign policy onto a sounder track.

In the course of pondering the sanctions imposed against the Soviet Union, the American government undertook a review of Western economic relations with the Soviet Union in the hope of developing a policy that, unlike the pipeline sanctions, could prove of lasting benefit to the Alliance. It soon became clear that this would require more resolute dealing with elements of incoherence in Western foreign policy. The reasoning that led to this conclusion was straightforward. On the one hand, NATO countries were devoting, year after year, vast resources to our common defense against the Soviet threat. Simultaneously, however, partly through private banks and partly through government agencies, we in the West kept lending during the past decade vast sums of money to the Soviet Union and its satellites.

At times, this was even being done at subsidized interest rates. In view of the high priority that the Soviet Union assigns to its military establishment, the financial resources that the West so liberally put at the disposal of the Soviets thus indirectly helped to strengthen their already formidable military establishment. To make matters worse, the Soviet Union continued to take advantage of the weaknesses in our controls on the export of militarily related products and technology.

These considerations were persistently pressed by the American government on its Allies during the past year. For a time, they were resisted by European governments, partly because of displeasure over the pipeline sanctions, partly also because of concern that the American initiative could lead to an East-West trade war. But as the American government made clear that its basic aim was simply to steer Western policy onto a path that was more consistent with Allied security interests, controversy and recrimination gradually yielded to quiet voices of reason.

On November 13, President Reagan was able to announce that agreement had been reached on the need to consider Allied security issues when making trade arrangements with the Soviet Union. More specifically, the United States and its partners agreed, first, that new contracts for Soviet natural gas would not be undertaken during the course of an urgent study of alternative sources of energy; second, that existing controls on the transfer of strategic items to the Soviets will be strengthened; third, that procedures for monitoring financial relations with the Soviets will be promptly established; and fourth, that the Allies will work to harmonize their export credit policies. In the eyes of the American government, these measures will promote Allied interests more effectively than the pipeline sanctions. The President therefore concluded his statement by announcing their removal. Long and difficult negotiations on ways of carrying out the agreed measures are undoubtedly still ahead of us, but the pipeline crisis as such has fortunately come to an end.

In other areas of economic policy—particularly defense burden-sharing and trade issues—the United States continues to have major differences with its European partners. Difficulties of this type have troubled the Alliance almost from its beginning, and in one form or another they are likely to remain troublesome in the years ahead. Even here, however, we have generally managed to work out our problems, and we have had some limited successes during the past year that are noteworthy.

The distribution of defense burdens among Allies inevitably raises difficult questions of equity. Many Americans, especially Members of Congress, have long felt that the United States is bearing an excessive part of the heavy costs of the Alliance. In view of the financial stringency that has developed in my country, such criticisms of Europe have recently intensified. Our NATO partners usually respond by reminding us that their spending on defense rose steadily during the 1970's while real American spending kept falling off. That is entirely true, but it does not tell the whole story. Official statistics indicate that defense spending reached 7.9 percent of the gross domestic product in the United States during 1970. The highest corresponding figures for each of our major Allies fell short of 5 percent in that year. While the defense outlays of the United States decreased during the 1970's, this gap has never been closed. Confronted with these facts, European governments are inclined to observe that monetary figures fail to capture all costs involved in the defense area, particularly the conscription of soldiers that exists in most of their countries. Such remonstrances, however, are not always accepted by Americans, as the lively discussions that have been resounding in our Congressional halls indicate.

Whatever the merits of ongoing debates among members of the Alliance, the Reagan Administration recognizes that some of the military proposals now before Congress would seriously weaken the Alliance. Not only that, they would also encourage the Russians to remain unyielding in the vital arms control negotiations now under way in Geneva. Those dangers have not escaped the attention of European leaders. In fact, many Europeans have long shared the widespread American belief that Europe is not doing enough for its own or for the common defense. Financial stringency is nowadays no less a problem in Europe than in the United States. In spite of that, the German

government has recently taken steps that should help Americans to see the problem of defense burden-sharing in a better perspective. Several months ago the Federal Republic signed a treaty with the United States under which it agreed to commit 90,000 reservists in support of American combat forces in the event of war. More recently, Minister Manfred Woerner announced that the new German budget provides a significant additional contribution for constructing vital NATO military facilities in Europe. These measures had long been urged by Americans on the German government. The fact that they have been adopted at a difficult time should certainly help to quiet American concerns.

Differences between the United States and its Allies over international trade issues also have a long and checkered history. From the end of World War II through the 1970's the broad trend of Western policy has been towards increasing liberalization of international trade and investment, and there can be little doubt that this trend contributed enormously to the prosperity of the West and other parts of the world. While the United States led the world towards an open trading system and unrestricted foreign investment, this policy—except for agriculture—was generally supported in Europe, particularly in the Federal Republic of Germany. Unfortunately, but not surprisingly, the deep recession of recent times has by now stirred up strong protectionist sentiment in many European countries and also in the United States.

The Reagan Administration has stoutly resisted Congressional moves toward protectionism—thus far with considerable although incomplete success. During the recent ministerial meeting of the parties to the General Agreement on Tariffs and Trade, the United States fought especially hard for an unequivocal commitment by the world's trade ministers to phase out existing measures restricting international trade and to refrain from taking new restrictive measures. The debates over this principle and on specific trade issues were protracted and at times bitter, but at the end American initiatives brought only modest results. Assuming professorial garb, Mr. Brock, the American trade representative, judged the result as deserving hardly more than a grade of "C"—an assessment that few informed observers have questioned.

From an American viewpoint, the most disappointing aspect of this meeting was the failure to convince the European Community to modify some aspects of its agricultural policy. For many years the Community has maintained farm prices above the world level. Surpluses therefore developed, and in order to move them into world markets the Community subsidized their export. As long as this policy was confined to protecting farm sales within the Community, the United States accepted it—although not without protest. But once the subsidization led to large exports to third-country markets, a more serious problem arose for American farmers and agricultural exporters of other countries. With farm incomes in the United States currently at their lowest level since the 1930's American protests against the Community's agricultural policy have become increasingly insistent. The Community however has refused to budge, maintaining among other things that the issue of its subsidies had already been settled in earlier negotiations. This and other arguments of the Community have not softened American attitudes; and unless this agricultural controversy is soon settled, there is a serious possibility that the Congress will pass retaliatory legislation next year. This would be so damaging for both the United States and Europe that I continue to believe that some mutual accommodation will be worked out.

Such a result, indeed, was achieved in connection with another trade dispute that for a time resisted every attempt at resolution. For many years the world steel industry has suffered from excess capacity and, as so often happens under such conditions, various countries—including some in Europe—made export subsidies available to their steel producers. As a consequence, large quantities of steel produced with the benefit of government subsidies have penetrated the American market in recent years. American steel manufacturers, who do not receive subsidies, sought to limit this vexing competition. They took advantage of a law that enables an industry to veto certain governmental efforts to work out trade arrangements with other countries. Despite this formidable obstacle, the American government finally reached an agreement with the European Commission that imposes moderate quotas on exports of various steel products to the United States.

To me, as to other confirmed free traders, this agreement has brought little joy. However, the practical choice that both Americans and Europeans faced in this instance was not between protectionism and free trade, but rather between degrees and kinds of protectionism. If the negotiations on steel quotas had failed, existing American law would have required prompt imposition of punitive duties on steel imports. Worse still, it seemed likely that in that event the Congress would legislate still more drastic protectionist measures. The negotiated settlement clearly violated the salutary principle of free trade, but it also forestalled more serious consequences. To this extent, it is not only a tolerable arrangement, but one that has served to reduce political tensions between the United States and its Allies.

The conclusion that I feel can justly be drawn from my review of the recent steel and other economic disputes within the Alliance is reassuring. To be sure, there have been excesses of political rhetoric on both sides of the Atlantic and, occasionally, misguided actions as well. Nevertheless, the United States and its European Allies have succeeded in working out—or at least in muting—most of their troublesome differences over economic issues. Our ability to accomplish this mutual accommodation under difficult conditions demonstrates that the moral, political, and security interests that unite us are strong enough to overcome even divisive economic issues. That at any rate has proved to be the case thus far, and from that we can surely draw encouragement for the future.

We must temper, however, any feeling of optimism that international economic conditions will improve so much in the near future that they will be unlikely to cause or intensify political strains within the Alliance. It is by now widely recognized that the weakness of the international economy during the past three years is the aftermath of the inflationary pressures released during the 1970's. It is not so clearly understood, however, that our recent economic diffeculties reflects more than the normal vicissitudes of the business cycle. They reflect also certain loss of business dynamism—that is, a gradual weakening of the underlying forces of economic growth in the Western world.

Liberal fiscal and monetary policies has served us well over a long generation in fostering full employment and improving the social environment. They might have continued to work beneficially if they had not been carried to excess. But, unfortunately, traditional rules of financial prudence were thrown to the winds. As a result, our Western economies have become so highly sensitive to the dangers of inflation that liberal financial policies can no longer be counted on to perform their earlier constructive function.

Of late, government and business thinking in the Western world has focused on creating an environment that is more conducive to business innovation and private capital investment than it has been in recent years. Responsible leaders in our respective countries frequently emphasize not only the need to practice moderation in the monetary area, but also the need to bring about some reduction from the high levels that both government spending and taxes have reached relative to the size of our respective national income. Even France, which moved for a while in another direction, has recently adopted a rather restrictive monetary policy, besides announcing the intention to restrain further expansion of budgetary deficits. With earlier economic policies now in general disrepute in the West, and the newer policies not yet fully tested, deep concern about the economic outlook has spread during the past year or two in the United States as well as throughout Western Europe.

Such pessimism can be overdone. In the United States at least, the aggregate output of the economy has remained virtually unchanged during the past six months or so, and there are now numerous indications that the groundwork for recovery has been laid. As noted earlier, both inflation and interest rates have come down sharply. Stock and bond prices have risen dramatically, thereby adding hundreds of billions of dollars to the net worth of individuals and business entities. Of late, consumer spending for goods and services has increased modestly. Residential construction has been moving upward again this year; home sales have recently revived; and the financial condition of mortgage-lending institutions has improved. The upward climb of wages has slowed materially; industrial productivity has recently perked up; and corporate profits have begun to increase. These improvements have been offset thus far by sharp deterioration of merchandise exports and business investment in new plant and equipment. Nevertheless, it seems likely that a gradual recovery of aggregate production and employment will get under way in the United States within the next few months.

With the possible exception of Great Britain, the immediate outlook for Europe is less favorable, in large part because of the greater rigidity of its labor markets. But it is reasonable to expect that any improvement in the American economy will be felt before too many months pass also in Western Europe.

Unemployment, nevertheless, will remain high in the West for an uncomfortable period, since the pace of recovery is likely to be slow in the present instance. There are compelling reasons for this gradualness. First, there are as yet hardly any signs that contracts for business construction or orders for business equipment have begun to increase either in the United States or in Western Europe. Second, most of the larger banks throughout the West must now real-

ize that their lending policies, both at home and abroad, were excessively liberal during the 1970's. They will consequently be more cautious lenders—perhaps excessively cautious lenders—in the years immediately ahead. Third, many of the less developed countries—not only Mexico, Brazil and Argentina, which lately have figured so heavily in the press—are at present unable to make timely payments of the interest or principal that is due on their overextended indebtedness.

These financial difficulties constitute a grave, but I believe still manageable, danger to the international banking system. Under the best of circumstances, however, great austerity will need to be practiced in many of the less developed countries, and their reduced imports will inevitably restrict the pace of Western economic recovery over the next two or three years, if not longer.

If my assessment of the economic outlook is anywhere near the mark, political tensions on account of economic difficulties may well continue to trouble the Alliance. To make progress on economic issues in the years immediately ahead, it is particularly important that every country avoid "beggar-thy-neighbor" policies. We cannot afford to think in terms of winners and losers when it comes to solving our common problems. It is essential, therefore, that member countries of the Alliance mobilize the vast economic and political statesmanship that is at their disposal. Cooperation among economic ministries, finance ministries, central banks, private commercial banks, and international financial agencies, which has not always been close, must become very much closer. The heads of Western governments, who thus far have been reasonably successful in controlling the disease of protectionism, must work still more earnestly towards this vital objective. Meetings among members of the foreign policy and defense establishments of the Alliance must occur still more frequently, and become more thorough as well as more timely, so that misunderstandings among their governments are kept to a minimum.

These, ladies and gentlemen, are the paths to confidence in the security and prosperity of the industrial democracies that are joined in the brotherhood of the Atlantic Alliance.●

THE REMARKABLE CAREER OF SIDNEY HOOK

● Mr. MOYNIHAN. Mr. President, I should like, for but a brief moment, to share with my colleagues just a sampling of the thought and wisdom that has made Dr. Sidney Hook such a remarkable force in the political culture of our Nation.

On October 29, 1982, Dr. Hook was treated to a Festschrift by his friends and colleagues on the occasion of his 80th birthday. The dinner, and the tributes and reflections by a distinguished set of speakers, remind us all not only of Dr. Hook's considerable achievements, but of his incalculable importance as a teacher of truth to generations.

Dr. Hook's response that evening, elegant in its precision, eloquent in its intellectual force (indeed, none present shall soon forget it) is worthy of anyone's study and is particularly useful to all those who serve in this body. I ask that it be printed at this point in the RECORD.

The material follows:

LIVING WITH DEEP TRUTHS IN A DIVIDED WORLD

(By Sidney Hook)

We reproduce here, with a few abbreviations and corrections, the response made by Sidney Hook to the speeches given at his eightieth-birthday dinner, held on October 29 at the Hotel St. Regis in New York City, honoring him for his prolonged dedication during the past half-century to the principles of secular humanism and the ideals of a free society. Among the speakers on that occasion were John Roche of Tufts, Daniel Bell of Harvard, Edward Shils of the University of Chicago and the University of Cambridge, Daniel Seligman, Assistant Managing Editor of Fortune, Bayard Rustin, Chairman of Social-Democrats, USA, and the A. Philip Randolph Educational Institute, and Paul Kurtz of the State University of New York at Buffalo.

The audience, limited in size at the request of the guest of honor, contained representatives of widely varying points of view whose experiences had intersected at some point with those of Sidney Hook. The range of interest and affiliation extended from Lane Kirkland, President of the AFL-CIO, and Albert Shanker, President of the American Federation of Teachers, to Glenn Campbell, Director of the Hoover Institute for the Study of War, Peace and Revolution, from free-wheeling existentialist philosophers to rigorous Kantians, from leaders of the Reconstructionist movement in Judaism to disillusioned founders of the American Communist movement, from the architects of the Welfare State to the ideological demolition theorists of libertarianism.

The proceedings focused on the presentation by friends and colleagues of a Festschrift, entitled "Sidney Hook: Philosopher of Democracy and Humanism," and formally concluded with a toast by Bayard Rustin and a standing ovation by the audience.—ED.

Dear Friends: Thank you for your toast. This has been a grueling experience for someone who is more accustomed to receiving brickbats than bouquets. It was as if I were listening to a rehearsal of my obituaries—except for the jokes.

I am far less certain that I have earned Bayard Rustin's generous toast than that it should go to someone who deserves the honor far more than I, to someone who suffers tonight—as he has suffered for so many nights and days—as the exemplar of the highest humanist ideals. I refer to Andrei Sakharov, the dauntless champion of everything we hold dear, who, though exiled, threatened, beaten, and humiliated, still keeps the Asiatic despotism of the Soviet Union at bay. Before his courage, and that of hundreds of others like him of whom we hear less, the bravest of us must fall silent.

Please accept my thanks for your kindness in sacrificing this wondrously beautiful fall day and evening—an entire weekend, for those of you who have traveled great distances—to participate in this event. I remember asking my old friend Adolf Berle, in his later years, to attend a function like this. He replied that only an order for a command performance or the request for his presence from a grandchild could induce him to put in an appearance. It is obvious to me that there are not enough grandchildren in view, or in being, to account for your presence, and so I choose to believe that you are here out of friendship.

I did not know that I had so many friends, and some of you have remarked on their number. But this I do know: you could easily fill a much larger hall with those who are not my friends, mordant critics and ill-wishers whom I have offended by my public views and activities. In a way I am proud of them, too.

More significant, one of you has observed that the many friends of Sidney Hook here tonight are not friends of one another. That is certainly true. And it is just as true that probably each one of you has differences with me on some issue at least as great as your differences with one another.

Oddly enough, I am heartened by that very fact—the fact that, despite all these differences, we recognize that there is some value—call it friendship or comradely feeling or common memories of joint enterprises in some good cause—that transcends these differences among us. In a world that is rapidly becoming more and more politicalized in a narrowly partisan way, where the islands of private life and the mores of civility are often overrun by angry tides of political passion. I am happy and proud to be the occasion for a meeting of friends—for a party, not for a political rally—in which we just enjoy our company, the conversation, the cheer and pleasure of being with one another. That this is still possible is a mark of a civilized society.

Nonetheless these differences between us exist and we cannot blink them away. I believe, however, that I have hit upon a consoling, perhaps a gratifying explanation of them—consoling, because it makes it easier to respect these differences and live with them; gratifying, because, if I am right, we need not fear their multiplication. I have come to the conclusion that we are divided by deep truths. A deep truth, according to Niels Bohr, is a truth whose opposite or contrary is just as true. For example, we tell our students and fellow citizens that those who forget the past are doomed to repeat it. That is a deep truth. But it is also a deep truth that those who always remember the past often don't know when it is over, when something relevantly new has appeared. There is the deep truth of determinism, and the deep truth of freedom and moral responsibility. There is the deep truth that too much government leads to despotism. But there is the opposite deep truth that no government, or anarchy, is the rule of a thousand despots. There are enough deep truths to go around for all of us, and I could spend the evening citing them.

Wisdom, of course, is knowing which deep truth. and how much of it, applies to the particular situation or case in hand. My conclusion therefore is that, on my theory, we may not all be wise but we are all profound. And for tonight that should be sufficient. Let us respect one another's profundity.

Tonight you have heard tributes paid to me for my virtues, and I accept them: not for myself alone, but for those of you who have fought with me to defend and further them. I accept them not only for those who are here but for those who are not here, for those whose faces I see in a recurrent dream when a close contemporary dies. In my dream, or vision, I see them at a table of the dead—the friends, and comrades of my generation who fought beside me in common causes. At this table, in a smiling mood and always beckoning to me, are V. F. Calverton, Ben Stolberg, Herbert Solow, Elliot Cohen, Lionel Trilling, Paul Blanshard, George

Counts, Jim Farrell, Bert Wolfe, Sol Levitas, and others. As I begin the last mile of my pilgrimage before I join its company, I hope I shall not see many new faces at the table.

I must also confess that, while listening to some of the tributes to my fortitude under hostile fire, I was a little embarrassed, somewhat like the heroic survivor of the famous Johnstown Flood of 1882, which I heard much about as a boy. This survivor talked incessantly about the immensity of the flood, as if it were the eighth—indeed the greatest—wonder of the world. He died at a ripe age talking about the great Johnstown flood. Having led a blameless life, since his chief occupation was telling about the flood, he was transported to heaven. There he noticed that he did not sit among the elect in the chosen circle. On inquiry he learned that places there were reserved only for witnesses to phenomenal events who regaled one another with their stories. Thereupon he rushed to St. Peter and pleaded that he above all was eligible and asked that he be permitted to join the elect. St. Peter heard him out, seemed dubious, but finally allowed him to enter to tell his story. But he warned him: "Go ahead. Tell your story. But remember that Noah is in the audience."

Well, they aren't as old as Noah, but in this audience are Irving Kristol, Norman Podhoretz, Melvin Lasky, Allen Weinstein, and others who have been targets of abuse, attack, and contumely, whose intensity, if not duration, has been as severe as anything I have been subjected to.

Because of the hour, I content myself with some brief observations. I have learned much from my friends, from my teachers, of course, and from some of you. But I have also learned from my critics, from those who have strongly disagreed with me. Without deceiving myself I believe I can truthfully say I have tried to be fair to those with whom I have disagreed.

One of the things I am proudest of is a statement you will find in the preface to the three-volume English edition of Nicolai Hartmann's treatise on Ethics, translated by Stanton Coit, the leader of the English Ethical Society. Coit writes that he was led to the reading of Hartmann's book by a very critical review of the German original I had published in the International Journal of Ethics. Despite my criticism of it from a fundamentally different naturalistic position, I had done sufficient justice to the contents and insights of the book to convince him of its greatness; and so he undertook the laborious task of translation. I cannot say I have always succeeded in being as fair to others as I was to Hartmann, but I have tried.

As I take stock of my present beliefs, I am struck by the fact that in some respects they are continuous with some of my intellectual beginnings. Even before I studied with Morris Cohen and John Dewey and read Max Weber, I had concluded that the chief danger in political and moral thinking was absolutism, the fanaticism of virtue, or the commitment to what the Germans called ein alleinseligmachender Wert, a single all-sanctifying ultimate good in terms of which any action can be justified. I had concluded that the danger was a failure to understand that the life of reason is based on the recognition of the plurality and conflict of values, that reason or intelligence owes its supremacy in our moral economy to the fact that it alone, of all other values, is the judge of its own limitations. It is wisdom that tells us that it is not wisdom to be only wise.

That discovery, that rational ethics is the ethics of responsibility, not of absolute purity, and that rational politics is the choice of the lesser evil, was a result of my wrestling with the philosophy of Leo Tolstoy. My first published article was "The Philosophy of Non-Resistance." Having lived through World War I (which can more appropriately be called "the second fall of man" than can the French Revolution, de Maistre and other French reactionaries to the contrary notwithstanding) and the terror that followed it. I was much impressed with the nobility of Tolstoy's doctrine and his absolute refusal to take a human life under any circumstance. To me, in my revulsion against the horrors of World War I, if anything could be regarded as absolutely sacred, this was it.

But I abandoned that view when I realized the human costs of holding it in the same way Tolstoy did—absolutely without qualification. The nearest Tolstoy himself came to a nervous breakdown was when he was confronted by situations—sometimes historical and not merely hypothetical—in which the only way thousands of innocent lives could be saved was by taking the life of the person who threatened them. Tolstoy would say that he would give up his own life to save them. But what if that didn't help? What if the only way to save the lives of the innocents was for you to take the life of the evildoer who is threatening them? Whoever refuses to do so if he could obviously makes himself co-responsible for the deaths of the innocent; and no doctrine, no religious piety, no profession of purity of principle can wash him free of guilt. In such situations one would have to be more than human, or less, to hold to Tolstoy's absolutist position. Yes, I agreed with Tolstoy that killing a human being is always an evil; but, like dying itself, it is not always the worst evil. Unless one holds some things more important than life, life itself becomes unworthy of man.

It is time I stopped. Some words of Santayana come to mind as I conclude. One of the characters in his Dialogues in Limbo, reflecting on the human condition, says. "The young man who hasn't wept is a savage, and the old man who hasn't laughed is a fool." Well, I am an old man, and fool though it makes me, I can find no cause or reason for laughter in the world today. I suspect that, like most of you, I am troubled by the state of the world and fearful about the prospects for survival of a free society. But, before yielding to despair, I recall a time when I felt even worse than I do today, a time when I was convinced that the free world, at least in Europe, was irretrievably lost.

Let me tell you about it. It was in 1945: Truman had just become president. The news from Central and Eastern Europe was very grave. No one seemed much alarmed about this, except a small group of us in New York. We drew up a memorandum of our fears. Sol Levitas that miracle worker induced a committee of senators, who had been card-playing, whiskey-drinking cronies of Truman during his days in the Senate, to call on their old buddy and express their fears about the actions and progress of the Red Army in Europe. The committee was headed by Senator Burton Wheeler, an isolationist. It was known that Truman himself had—foolishy, I may add—been in favor of neutrality when Hitler double-crossed his ally Stalin and invaded the Soviet Union, not realizing that Hitler was the greater danger and evil. But now Hitler was dead. Sol Levitas reported to us that the committee had been warmly received but that, after Truman had heard Wheeler and the others out, he replied: "Gentleman, you are worried about the spread of Communism: I am worried about the existence of British imperialism."

This was on the eve of Britain's granting independence to India! You can imagine how we felt about the future prospects of the free world. We were wrong!

So let us not despair. We remember the Cassandras only when they are right, but they are often wrong. There are too many variables in history to give us certainty. We may be as easily duped by excessive fear as by excessive hope. We too, are one of the variables in history, and our strength and influence are not predetermined. What we think and do may still make a difference.

There is a saying in Poland today: "While there is death, there is hope for freedom." We are not so far along. If we are prepared to go down defending human freedom, we may avoid the necessity of having to do so.

Thank you very much.●

TAX REFORM

● Mr. HATFIELD. Mr. President, Dr. Richard Lindholm, a noted business professor at the University of Oregon, has recently published an excellent work entitled "Value Added Tax and Other Tax Reforms." He is now working on a new book which will outline the advantages of the VAT over the flat rate income tax system. I look forward to reviewing Dr. Lindholm's thesis.

Mr. President, I ask that a portion of his new work be printed in the RECORD.

DESIRABLENESS OF A FLAT RATE INCOME TAX (FRIT) AND A VALUE-ADDED TAX (VAT)

(By Richard W. Lindholm, Ph. D., Emeritus Professor and Dean of Business, University of Oregon)

IN A NUTSHELL

Both a flat rate income tax (FRIT) and a value added tax (VAT) apply a fixed rate to the base being taxed, income in the case of FRIT and expenditures in the case of VAT. Neither of these taxes pretends to be a personal tax. However, spending is now realized to be a better measurement of gross ability-to-pay than is income.

In many cases government actions are of the highest priority. Therefore, adequate and stable government revenues are of the highest importance. In carrying out this revenue provision function the VAT base, because of its greater stability, must be preferred.

Although neither VAT nor FRIT is a personal tax, it is possible through use of broad exemptions and deductions, to give these taxes a limited ability to adjust to the personal and economic situation of the taxpayer. For example, FRIT may provide for the deduction of a given quantity of income for each dependent and VAT a tax credit representing the purchase of a given value of food and shelter.

The expansicn of exemptions, deductions or allowances make both VAT and FRIT more complex and costly to administer. In addition, both taxes soon suffer from collection inadequacies and attract all of the weaknesses so apparent in the existing federal tax system. One basis of judging, whether VAT or FRIT should be introduced

to put in place a reformed federal tax system is the relative degree of the built-in resistance of the tax base and rates of the two taxes to adjustment to meet personal equity demands.

Here we can rely to a degree on the European experience. VAT as it has developed in Western Europe during the past twenty-five years has demonstrated a strong resistance to special provisions. The good record exists largely because the VAT collected by each business firm as it makes a sale is reduced by VAT. As a result, each business subject to VAT is anxious to make its own purchases from other VAT paying firms because this minimizes its VAT liability. Under the VAT, a business firm wishes to be either fully covered by VAT or subject to zero rating.

Under zero rating VAT taxes paid on purchases are refunded. Under exemption taxes paid on purchases are not refunded but the firm's sales are exempt from VAT. Under FRIT any exemption directly affects only the incomes of the exempt taxpayer and does not cause a deterioration of the tax position of other income receivers and therefore the opposition of other taxpayers, as does exemption under VAT.

The FRIT is levied directly on the income earned by wage-earners. This is the same base on which the employee portion of the social security tax rests. One result is a heavier tax burden directly placed on wage-earners than on those with income arising from dividends and rent.

Under VAT the tax payment is made by all sellers of goods and the purchasers become liable to a price that includes this tax cost along with all other costs. The final user of the good or service does not have the potential of directly shifting the tax burden either backward onto resource providers or forward onto resource users. The FRIT taxpayers can only reduce tax payments by earning less—reduce productivity. The VAT taxpayer can reduce his tax liabilities by purchasing less—making more resources available for investment.

A final but very important advantage of a VAT over a FRIT is the treatment the international community through the General Agreement on Tariffs and Trade (GATT) gives to VAT and FRIT. The VAT has been declared by GATT and by the general world-wide economic community to be a indirect tax. FRIT on the other hand is generally accepted and treated as a direct tax because the base is income which is judged to be affected by personal related adjustments. Also, VAT holds the indirect label because it is judged to be shifted forward in higher prices. FRIT is considered to be a direct tax because its collections are seen to result in lower incomes and not higher prices.

These differences in the general understanding of the location of the burden of direct and indirect taxes results in GATT allowing VAT nations to deduct VAT from exports and to add on the domestic VAT as a border tax on imports, without becoming guilty of violation of general freedom of trade and tariff treaties.

The international trade advantage of VAT over FRIT and all types of income and profit based taxes is direct and understood by businessmen engaged in international commerce. The export stimulating impact of indirect taxes and the import restriction impact of these same taxes causes a nation to develop a strong balance of trade and services and to enjoy a higher level of employment. The advantage of indirect taxes in the allocation of tax burdens is frequently denied by economists who emphasize a general macroeconomic approach. They see the commerical advantage of indirect taxes to be washed out in international exchange rate adjustments.

If the commercial advantage of indirect tax treatment of exports and imports does not exist, as macroeconomists argue, then the nations using a substantial VAT should be willing to abandon the special export and import advantages enjoyed by users of VAT.

The discussion of federal tax reform has concentrated on the income tax shifts. It was only during a brief period between 1977 and 1979 that a replacement for the income tax was seriously considered by Congress under the leadership of Al Ullman, Chairman of the Committee on Ways and Means. Prior to this the Nixon administration in 1972 proposed a VAT to finance the reduction of property taxes. Neither of these proposals for a federal VAT advanced beyond committee consideration.

Currently several FRIT approaches are being pushed as a procedure to simplify the federal income tax. This development continues many weaknesses of the income tax while failing to provide an adequate tax base to permit reduction of the heavy burden carried directly through taxation of wage earnings.

Federal taxes: A new system

	Billions
Existing system:	
Individual income tax: Top rate 50 percent	$300
Corporate income tax: Top rate 46 percent	65
Estate and gift tax: Top rate 50 percent	8
Estimated 1982 total	373
New system:	
Value added tax: 15 percent flat rate	330
Net wealth tax: 2 percent flat rate	43
Total	373

Note.—Much of stagflation is tax caused and can be tax erased: High rates, narrow base and cyclical collections and low rates, broad base and stable collections.●

WORKERS UNDER COMMUNISM

● Mr. MOYNIHAN. Mr. President, I am pleased to call to the attention of the Senate an important new journalistic endeavor. Workers Under Communism is a quarterly devoted to examining the actual condition of the working classes in Communist societies, a subject about which we know far too little. The product of a collaborative effort of the League for Industrial Democracy and the Georgetown University international labor program, the inaugural issue evidences serious scholarship and lucid prose.

The conventions of the International Labor Organization guarantee workers' rights. Workers Under Communism proposes to offer, for the first time, regular status reports on the condition and rights of workers in the Communist world. It fills a crucial gap. And it is welcome indeed.

This essay by Arch Puddington, the new journal's editor, is a compelling treatment of the role and program of Solidarity, a free labor union crushed by an oppressive regime. Mr. Puddington's article is suggestive of the general excellence and significance of this endeavor. I ask that the text of Mr. Puddington's article be printed in the RECORD.

The article follows:

SOLIDARITY AND MARTIAL LAW POLAND

(By Arch Puddington)

It was Lenin who, early on, called for subordinating the trade union movement to the will of the Communist Party. Although Lenin's successors have violated any number of his strictures, on this issue they have faithfully followed his teachings. For Lenin, keeping a firm grip on the unions was necessary to make two things possible—the building of a movement capable of transforming the economic order, and the controlling of society. For today's Communists, the issue is one of simple control.

Recent events in Poland reinforce Lenin's view that free trade unions and Communism are incompatible. General Jaruzelski's promises to permit Solidarity or a similar organization under a different name to function independently of the party-state once "order" has been restored cannot be taken seriously. The same pledges to respect the autonomy of worker organizations established during periods of upheaval have been made before: by Kadar and Gomulka, in 1956, by Husak in 1968, and by Gierek in 1971. Without exception, these independent or semi-independent workers' bodies were subverted, coerced, and eventually destroyed, once the Communist authorities reestablished their control over the society. Nor will a desire to placate public opinion in Western Europe prevent Jaruzelski from stripping away the powers won by Solidarity during the precoup period. Even if the Polish regime favored granting solidarity limited autonomy as a conciliatory move to coax more productivity out of the work force, it is inconceivable that the Soviet Union, which is reportedly ploughing $4 to $5 billion into the Polish economy (more than it spends annually to prop up the Cuban dictatorship) would assent to the continued presence of an independent union.

Many of us who recognized the contradictions inherent in Solidarity's existence in Communist Poland chose not to press that point, hoping against hope that the Poles would succeed where the Hungarians and Czechs had failed. It is not, of course, simply a trade union which has been crushed, but an entire people. Solidarity was never, even at its inception, a trade union as we in the democratic world understand the concept. It could not have been, given the nature of the society in which it sought to function. Solidarity leaders described the organization as "a movement for national renewal which took the form of a trade union"—as accurate a description as we have encountered. On the other hand, it is important that we not minimize the fact of Solidarity's basic trade union nature. Above all else, Solidarity was a working class movement, one of the largest working class movements in history. Its leadership was drawn from the working class, and it maintained, even in the most difficult times, a huge and loyal following among Polish workers. Moreover, when Solidarity's tactics or programs diverged from those usually associated with Western trade unions, the goal was always to enable it to serve its members more effectively.

It is important to keep these facts in mind at a time when the Soviet Union, its sympathizers, and even some Western non-sympathizers who should know better, are engaged in a systematic attempt to rewrite the history of the Solidarity experiment. In its most extreme expression, the revisionist (and Polish government) view holds that Solidarity was not a trade union at all, but a pure and simple oppositionist movement bent on overthrowing the Communist Party. According to this view, Solidarity's working class leadership had been pushed aside by "antisocialist" radicals like Jacek Kuron and other members of the intellectual opposition from the Committee for Social Self-defense, KOR. These radicals, it was said, misled the workers, perverted the union's aims, and pushed the country to a state of near-anarchy, making the imposition of martial law—regrettably—necessary and unavoidable.

Certainly Solidarity's leaders shared strong democratic convictions, and hoped that the changes sparked by the union would lead eventually to a pluralistic or semi-democratic political system. They were not naive; with a few exceptions, Solidarity's leaders understood that the one-party system and Poland's military alliance with the Soviet Union could not be challenged. On the other hand, and understandably, Solidarity leaders had nothing but contempt for the country's Communist authorities, who during thirty-five years in power had produced a bankrupt economy and the strangling of national culture, and whose response, when finally confronted with an unprecedented national crisis, was a desperate determination to hold on to the privileges of position and rank. Those who are sympathetic to Solidarity but now criticize the Poles for having "gone too far" are guilty of a subtle double standard: they demand from Solidarity an impossible degree of discipline and restraint, while they pass over the provocations, inertia, and moral failures of the Communist leadership.

Solidarity cannot be judged without giving the Polish context careful consideration. (This may seem obvious but apparently it is not, as is revealed by interpretations of the union's actions which have appeared in the Western press since martial law was declared.) At every turn, Solidarity's policies and tactics were influenced by the fact that it had to function within a political system where antidemocratic values are inscribed in official ideology.

It was this anti-democratic context which dictated the priority given to the issue of establishing an uncensored union press. Almost every trade union in the democratic world has its own press, free from the editorial control of government or party. No union could long survive where the means of communication are monopolized by forces hostile to its very existence. Here Solidarity's demands brought about a remarkable transformation in Poland's access to reliable news, not only because the presence of a competing source of information forced the party-controlled media to offer more open and objective coverage of domestic events.

Then there is the issue of Solidarity's "syndicalist" tendencies, meaning its use of the strike and other direct-action tactics in the pursuit of broad political and social reforms. For some Westerners, and especially for Solidarity supporters on the political left, evidences of syndicalism were among the union's most appealing features. Here, finally, was a workers' movement willing to challenge the authorities on the streets and in the factories. But at the same time, and far more significantly from the standpoint of Solidarity's international reputation, the union's syndicalist (or as some preferred it, anarchistic) character raised serious doubts about its ability to play a useful role in the rebuilding of the Polish economy. Once again, though, we cannot evaluate the union's tactics without considering the Polish context. During the innumerable conflicts with the government, Lech Walesa did not favor using the strike or the threat of strike as a major weapon. He soon found, however, that the union's options were severely limited.

In a Communist country, especially one with a Soviet-model centralized economic structure, meaningful collective bargaining is practically impossible. In the Polish case, the miserable condition of the economy ensured that Solidarity could not hope to negotiate a better standard of living for its members, a severe handicap with which the union was saddled from the very beginning. This meant that the only alternative to industrial strife was a compromise settlement involving the government, the union, and the Catholic Church—a social compact designed to revive the Polish economy while guaranteeing the continuation of the liberalization process. As matters worked out, the Communist Party was simply too weak and divided to engage in serious negotiations with Solidarity, as can be seen in the pattern of provocation and capitulation which marked the government's behavior throughout Solidarity's existence.

In this difficult situation, Solidarity had no choice but to resort to direct action—strikes, sit-ins, slow-downs, work-to-rule, and so on. Contrary to certain Western perceptions, these tactics were not used in a frivolous or irresponsible way. Solidarity simply was determined not to repeat the error of those previous workers' movements which had accepted the Communist government's pledges of cooperation only to see their organizations subverted and broken up. Solidarity did not trust the government, and for good reason. In a little-noted speech delivered at the time of the signing of the Gdansk accords, Stanislaw Kania as much as said that the government's acquiescence was a tactical maneuver designed to buy time for a future recovery of power. Given this governmental attitude and the regime's record of duplicity, the union determined that only by its own willingness to take militant action could it ensure that the regime would fulfill its promises.

A cornerstone of Solidarity's program was its plan for industrial self-management. For some, the emphasis on self-management was still further evidence of the union's syndicalist character. In fact, various forms of enterprise power sharing have long been favored by Western unions; and in many countries worker participation has been negotiated by unions and employers or provided for by legislation. Seldom, however, are these power-sharing schemes given the central programmatic role that self-management assumed for Solidarity. But this was largely dictated by the structure of the Polish economy. Convincing arguments can be made that self-management would not have proved especially helpful in Poland, given the preordained hostility of an entrenched and seemingly unreformable industrial bureaucracy. On the other hand, practically all other avenues for participation in economic decision making were foreclosed. And in those few enterprises where the self-management system was instituted and where management was cooperative, the results were often a substantial increase in productivity and a dramatic improvement in the attitude of the workers.

Another unfortunate misconception concerns Solidarity's intellectual advisors. Intellectual-baiting is a time-honored practice of Communist regimes, the objective being to prevent an alliance between dissidents and workers. In Poland, a government-orchestrated campaign to discredit the intellectuals grouped around Solidarity was a permanent fixture of the political culture, and the constant accusations that intellectuals were alien elements bent on exploiting the union's popularity to advance their own "anti-socialist" agenda found a certain resonance in the West. Thus, a prominent Polish-American political figure declared, after the coup, that Solidarity's downfall was the result of its having come under the domination of KOR "radicals." Here is yet another example of the double standard mentioned earlier. No one considers it unusual that trade unions in the democratic world hire intellectuals to provide advice and to carry out certain functions which are essential to a union's work in a complex industrialized society. All large unions include on their staffs sociologists, economists, writers, and other professionals. The solidarity intellectuals, while opposed to the Communist system, did not share a common ideology; their views ranged from socialist to liberal. More important, they were neither naive, irresponsible, nor conspiratorial. As veterans of the opposition movement, the KOR members were often more realistic and prudent than the elected Solidarity leaders, and far less drawn to confrontationism than many ordinary Solidarity members.

One of the most telling arguments against charges that Solidarity was intent on fostering "counter-revolution" is the union's response to the coup. As is by now obvious, there was no contingency plan to use violence in the event of actions against the union by the government or, for that matter, the Soviets. There were no stockpiles of arms or explosives; had there been, we would by now have heard about them from the regime. Some Solidarity supporters have interpreted the absence of a militant response as a sign of the union's lack of foresight. But Solidarity representatives in the West have indicated that a conscious decision had been made early on not to encourage violence in answer to official provocation; to have done so, Solidarity believed, would have discredited the union in the eyes of the Polish people while giving the regime a ready-made excuse for repression. This restraint also reflects the seriousness with which Solidarity leaders took their mission as representatives of the working class. Historically, their attitude stands in stark contrast to that of the Communists, who have never hesitated to sacrifice ordinary people in their drive for dominance.

What of the future? A portent of things to come may be found in a report issued by a special government commission, headed by Deputy Prime Minister Mieczyslaw Rakowski, which concludes that trade unions in post-martial-law Poland should be reborn "on the basis of the constitutional principles of the socialist political order." This can only be interpreted to mean the placement of the Polish labor movement under firm party-state control, and the end of Solidarity. Meanwhile, the country's intellectuals are being subjected to a modified form of neo-Stalinist terror through the govern-

ment's monopoly on employment. Universities, publishing houses, and other cultural institutions are already in the process of determining whether their employees can pass the test of political reliability; those receiving failing marks face dismissal. In "normalized" Poland, getting the sack can have quite serious consequences. The military authorities have already issued a decree making unemployed males aged 18 to 45 subject to forced labor; we could very well see professors, lawyers, and economists serving as night watchmen or cleaning latrines in the near future.

It is difficult to predict how the working class will respond to the new order. Solidarity's appeal for passive resistance appears to have had an impact, with industrial productivity well below normal. The application of outright terror by the regime, should work routine fail to return to normal, cannot be ruled out.

It is also possible that the Polish workers, in resigned sorrow, will adjust to the new situation out of a sense that ultimately they have no alternative. Resistance to martial law so far has not approached the levels which many in the West would have anticipated. The Poles themselves were fond of boasting that, unlike the Czechs, they would fight should the Soviets invade. The Poles might have responded differently to Soviet intervention than they did when confronted by their own security forces. But it is more likely that the results would have differed little from the pattern we've already witnessed. I think the reason for the Poles' restrained response go beyond the evident efficiency of the government's action. There is a saying in the Soviet Union that "the armies of socialism march in only one direction." The Poles, and indeed all the people subject to Soviet domination, are well aware of the implications of this proverb. The Soviets may not enter into military adventures impetuously, but once they do they push events to their conclusion, and world opinion and the people affected be damned. Much the same holds for the indigenous Communist parties, even the most inept. Open resistance, however heroic it might have appeared, was perceived as futile. Given these harsh realities, the passive resistance course announced by Solidarity may ultimately prove a better strategy for salvaging a few social reforms then open rebellion would have done.

Solidarity, of course, has not totally succumbed to the regime's repression. It remains active both as an underground movement inside Poland and as a pressure group for Polish democratic rights in the West. Within Poland, a network of activists are playing key roles in mobilizing a campaign of passive resistance to the martial law, with an eye toward a step-up in opposition this spring. In this endeavor, Solidarity has benefited from its democratic structure. Second, third, and fourth level leaders, men and women who were elected to their positions and in whom the workers have confidence, have assumed the leadership roles since the more prominent union figures were interned. It is these leaders who are responsible for the publication of the dozens of pamphlets, flyers, bulletins, and newspapers which appear each week throughout martial-law Poland, and which provide an alternative source of information for those whose only other source of domestic news is the sterile official press. These publications contain reports of strikes and riots, declarations of imprisoned leaders, descriptions of conditions inside the internment camps, and information about government efforts to impose political conformity on educational institutions, the press, and other institutions.

Outside Poland, committees and organizations dedicated to mobilizing support for Solidarity have been established in Paris, London, Stockholm, New York, and other major western cities. These groups are spearheaded by Solidarity leaders and members of the Polish intellectual opposition who were stranded in the West at the time of the coup. They publish information on developments inside Poland which are often not covered by the media, and they work with trade unions, religious organizations, academic associations, and political groups in order to organize actions on Solidarity's behalf.

The Solidarity experience in Poland has been a dramatic demonstration to the world the human rights indeed remain an aspiration of peoples, however long they may be subjected to despotic repression. The mismanagement and inefficiency of the regime had led to economic disaster, and this spur created the impetus that gave voice and organization to an independent movement. That it was the Polish working class which took the initiative in organizing the free movement is especially significant—and ironic—in a society where the rules sought legitimacy based on their claim to being the representatives of the working class. The fact that, in this country of deep patriotic commitment, the regime was originally imposed from the outside and continued to be limited in its direction by outside dictation, has been significant in conditioning the attitude of the Polish people. The independent organization of the working class, in the form of Solidarity, stripped the regime of any claim to legitimacy. It was left with naked power as its only weapon against a challenge which its mentors to the East insisted that it meet head on. For people elsewhere, as in Poland, suppression succeeded only in underscoring the valiant initiative represented by Solidarity, a free trade union movement in a Communist society, carrying with it the support of the entire Polish people—workers peasants, students, intellectuals. The Soviet Union cannot, through its proxy suppression, cancel this inspiration and this reality.●

ORDER FOR RECESS TODAY UNTIL 3 P.M. TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 3 p.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR SPECTER TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that, after the recognition of the two leaders under the standing order tomorrow, the Senator from Pennsylvania (Mr. SPECTER) be recognized on special order for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT FROM THURSDAY OR FRIDAY UNTIL MONDAY, FEBRUARY 14, 1983

Mr. BAKER. Mr. President, the concurrent resolution I am about to send to the desk is a recess resolution which I have shown the minority leader, and I understand he perhaps does not object to its consideration at this time.

Mr. President, I now send a Senate concurrent resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution.

The legislative clerk read as follows:

S. CON. RES. 8

Resolved by the Senate (the House of Representatives concurring), That when the Senate adjourns on Thursday, February 3, 1983, or Friday, February 4, 1983, pursuant to a motion of the Majority Leader or his designee, pursuant to this resolution, it stand adjourned until 12 noon on Monday, February 14, 1983.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 8) was agreed to.

Mr. BAKER. I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Mr. BOSCHWITZ assumed the chair.)

ORDER OF PROCEDURE ON WEDNESDAY AND THURSDAY

Mr. BAKER. Mr. President, on tomorrow the Senate will convene at 3 p.m. It is not anticipated that it will be a very busy day, hence the late hour for convening. However, there may be matters that can be cleared for action by unanimous consent, and I am anxious to see the Senate get off to as good a start as possible. Hence, I urge Senators to call the attention of the leadership on both sides to any matters that they might wish to present.

The Senate then, Mr. President, will go over until Thursday, the following day. It is anticipated that on Thursday the Senate will turn to the consideration of Calendar Order No. 2, S. 271.

Mr. President, I do not expect that that will be a highly controversial measure, but it will no doubt require some time. It is the only matter currently on the calendar of general orders. I do not anticipate asking the Senate to be in session then, Mr. President, on Friday.

Once again, may I remind Senators that the Monday through Thursday routine is not being established as a precedent. Indeed, I hope and expect that the Senate will be able to utilize

the full 5 days of the normal legislative week during the early weeks of this session, but there is simply nothing on the calendar to deal with at this time. We have to give our committees time to report out legislation for the consideration of the full Senate in an orderly way. Therefore, I do not anticipate a session of the Senate on Friday.

Mr. BYRD. Mr. President, will the majority leader yield?

Mr. BAKER. Yes, I yield.

Mr. BYRD. The distinguished majority leader has said that he does not anticipate a session of the Senate on Friday.

Friday is the day on which the measure on the calendar would qualify under the 3-day rule. It would still need an ajournment or unanimous-consent order to comply with the 1-day rule, but the minority is prepared to give the majority leader the waiver of the 3-day rule and the 1-day rule if he wishes to schedule this for Thursday.

Mr. BAKER. I thank the Senator. I am very grateful.

Mr. President, I reiterate that it is the hope of the leadership on this side that the Senate can turn to the consideration of S. 271 on Thursday. The minority leader correctly points out that there is a report to accompany this measure and that both the 1-day rule and the 3-day rule apply.

Notwithstanding, I hope that it is possible for the Senate to grant unanimous-consent consideration of this bill on Thursday.

If that is the case, and if we can finish this bill on Thursday, then it would not be the intention of the leadership to ask the Senate to meet on Friday.

Mr. President, there are other matters that can be dealt with tomorrow, as I indicated earlier.

RECESS UNTIL 3 P.M. TOMORROW

Mr. BAKER. Mr. President, I see no Senator now seeking recognition. Does the minority leader have further business to ask the Senate to consider?

Mr. BYRD. Mr. President, I have none, and I thank the majority leader.

Mr. BAKER. Then I am prepared, Mr. President, and I do now ask unanimous consent that the Senate stand in recess until 3 p.m. tomorrow under the order previously entered.

There being no objection, the Senate, at 5:14 p.m., recessed until Wednesday, February 2, 1983, at 3 p.m.

CONFIRMATIONS

Executive nomination confirmed by the Senate February 1, 1983.

DEPARTMENT OF TRANSPORTATION

Elizabeth Hanford Dole, of Kansas, to be Secretary of Transportation.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.